
Note on the 2023 PTE Tax Return

Starting with tax year 2023, pass-through withholding will no longer be reported on the RPD-41367, *PTW-D Pass-through Entity Withholding Detail Report*. This form has been retired. Withholding tax from distributions to owners is now reported directly on the Form PTE on schedule PTE-D, *Detail of Owner Withholding, Composite Tax and Entity-level tax*.

In addition, a separate section of the tax return has been created for those electing to file entity-level tax. House Bill 368 passed in the 2023 regular session created new provisions for the determination of net income for an entity electing to file entity-level tax. This amount is calculated in a different manner than net income for withholding.

DUE DATES

The due date of the new Form PTE is on or before the due date of the federal tax return required for the pass-through entity. This is the case whether filing using a calendar year or a fiscal year. You will enter the due date of the required federal return for the PTE on the New Mexico Form PTE.

Privacy Notification and Confidentiality

The New Mexico Taxation and Revenue Department requires each taxpayer to furnish a federal employer identification number (FEIN) for taxpayer identification. The Department protects all information supplied electronically by taxpayers using encryption and firewalls. Taxpayer information on returns is protected in accordance with the confidentiality provisions of the Tax Administration Act, Section 7-1-8 NMSA 1978.

IMPORTANT: If a taxpayer furnishes a truncated FEIN, such as XX-XXX1234, the return is incomplete and the Department sends it back to the taxpayer to refile.

Contact Information

You can contact the Department by mail, email, or phone.

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

Email: CIT.TaxReturnHelp@tax.nm.gov

Phone: (505) 827-0825 in Santa Fe or
Toll free (866) 809-2335

These instructions cover the following forms:

- PTE, *New Mexico Pass-Through Entities Tax Return*
 - PTE-A, *New Mexico Apportionment Factors*
 - PTE-B, *Allocated Non-business Income Taxable to Owners*
 - PTE-D, *Detail of Owner Withholding, Composite Tax and Entity-level tax*
- PTE-ES, *Pass-Through Entities Estimated Tax Payment Voucher*
- PTE-PV, *Pass-Through Entities Penalty Payment Voucher*
- PTE-EXT, *Pass-Through Entity Extension Payment Voucher*
- RPD-41373, *Application for Refund of Tax Withheld From Pass-Through Entities*

summary is available each year to describe new legislation passed during the year that affects the Department.

For a summary, go to www.tax.newmexico.gov, click **FORMS & PUBLICATIONS, Publications, Legislative Summaries**.

E-File and E-Pay Services

You can use Taxpayer Access Point (TAP) or third-party software through Federal/State filing to e-file tax returns.

- **File 2023 Form PTE Online** using Taxpayer Access Point (TAP) on the Department's web site at <https://tap.state.nm.us>. First-time filers will need to create a login name and password.
 - **Pay via credit card.** A convenience fee is calculated on the amount of the transaction and 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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2023 Legislative Summary

For information about New Mexico tax law changes enacted during 2023, see **LS-2023 Legislative Summary 2023**. A

Contacting the New Mexico Secretary of State

Visit <https://www.sos.nm.gov/> for more information about Profit and Non-Profit Corporate Reporting. You may contact the New Mexico Secretary of State Office by mail, email, or phone:

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

Email: Business.Services@sos.nm.gov

Phone: (505) 827-4508 in Santa Fe or
Toll free (800) 477-3632

Contact Our Local Offices

Local tax offices can provide full service and information about the Department's taxes, programs, and forms as well as specific information about your filing situation.

ALBUQUERQUE:

Taxation & Revenue Department
Copper Pointe
10500 Copper Avenue NE
P.O. Box 8485
Albuquerque, NM 87123-8485

FARMINGTON:

Taxation & Revenue Department
3501 E. Main Street, Suite N
P.O. Box 479
Farmington, NM 87499-0479

LAS CRUCES:

Taxation & Revenue Department
2540 S. El Paseo, Building #2
P.O. Box 607
Las Cruces, NM 88004-0607

ROSWELL:

Taxation & Revenue Department
400 North Pennsylvania, Suite 200
P.O. Box 1557
Roswell, NM 88202-1557

SANTA FE:

Taxation & Revenue Department
1200 South St. Francis Drive
P.O. Box 5374
Santa Fe, NM 87502-5374

Call Center: 1-866-285-2996

Use Our Online Services

<https://www.tax.newmexico.gov/online-services/>

◆ Ask a question.

For questions about state tax policies, legislation, regulations, and rulings, email policy.office@tax.nm.gov.

For questions about the PTE return, email CIT.TaxReturnHelp@tax.nm.gov.

◆ E-file and e-pay taxes with TAP using a credit card or an electronic check.

Taxpayer Access Point (TAP), our secure resource at <https://tap.state.nm.us>, lets you e-file certain returns and e-pay taxes.

A convenience fee will be calculated on credit card transaction amounts. It covers costs companies bill us when you use this payment option. Or e-pay by electronic check at no charge. An electronic check authorizes us to debit the checking account in the amount and on the date you specify.

◆ Check the status of an account and more with TAP.

With TAP you can also check the status of tax accounts, register a business, change an address, and manage tax account history.

◆ Download forms and publications.

For the latest and prior year forms and publications, go to www.tax.newmexico.gov/forms-publications/.

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INSTRUCTIONS FOR 2023 PTE GENERAL INSTRUCTION

WHO MUST FILE

Who Must File

Pass-through entities (PTEs) doing business in the state must file a *New Mexico Pass-Through Entities Tax Return* (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

The due date of the Form PTE is on or before the due date of the federal tax return required for the pass-through entity. This is the case whether filing using a calendar year or a fiscal year. You will enter the due date of the required federal return on the New Mexico Form PTE.

Extension Of Time To File

The Department 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.

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

Which Return To File

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, 2023, use the 2023 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 page 5.

If your business does not file a Form 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: An entity that files the S-Corp or FID-1 return is able to report Withholding Tax, Entity-level tax, and Composite Return Tax on that return.

File Electronically

If a PTE has 51 or more payees who receive New Mexico net income, the PTE is required to electronically file Form PTE 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 and E-Pay 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 payees who receive New Mexico taxable net income, the PTE may choose to submit the completed return electronically or in paper format.

Important: When required to file electronically, a paper filed return will be rejected by the Department.

Requirement to Report and Pay New Mexico Withholding Tax

A PTE must report each owner's share of net income allocable to New Mexico. The PTE reports all resident and non-resident owners with net allocable income or losses on the PTE-D, even if no tax is being withheld. The PTE must then report and remit New Mexico withholding tax for each non-resident owner, unless there exists an exception corresponding to a reason code on page 19.

Except for a PTE that is a personal services business, if the PTE entered into an agreement with the owner for the owner to file and pay tax due on the owner's share of allocable net income using RPD-41353, *Owner's or Remittee's Agreement to Pay Withholding On Behalf of a Pass-Through Entity or Remitter*, the PTE does not withhold and enters 2 in the Reason Code box on the PTE-D.

A personal services business is a business organization that payments for the services of a performing artist for purposes of the film production tax credit. A PTE that is a personal services business cannot enter into an agreement

INSTRUCTIONS FOR 2023 PTE GENERAL INSTRUCTION

with its owners using RPD-41353.

A pass-through entity (PTE) that is subject to withholding tax from distributions to its non-resident owners, partners, or members net income according to the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act (Sections 7-3A-1 through 7-3A-10 NMSA 1978) must annually report each owner's, partner's, member's, or beneficiary's share of net income allocable to New Mexico and remit the New Mexico tax withheld for each owner. The required annual reporting of withholding is reported on the PTE tax return on schedule PTE-D. Additionally, PTEs are 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, *Annual Statement of Pass-Through Entity Withholding*, 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. If the owner elects to have the entity pay composite income tax on their behalf, the PTE will provide Form RPD-41359 as support to the owner that the tax has been paid. Composite return tax is an election available to nonresident members only.

A PTE that elects to file and pay entity-level tax must provide Form RPD-41359 to its owners to show the owner's share of net income subject to entity-level tax and the owner's share of entity-level tax paid by the entity. The election to pay entity-level tax is binding on all owners of the electing pass-through entity whose income is included in the entity's distributed net income.

Forms 1099-Misc, *pro forma* 1099-Misc, or Form RPD-41359, 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.**

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. Publication FYI-406 is available by contacting your local district tax office or online www.tax.newmexico.gov.

INSTRUCTIONS FOR 2023 PTE GENERAL INSTRUCTION

IF YOU FILE...

If you file federal form		You must file New Mexico form	
1065	U.S. Return of Partnership Income	PTE	New Mexico Pass-Through Entities Tax Return
1120	U.S. Corporation Income Tax Return	CIT-1	Corporate Income and Franchise Tax Return
1120-REIT	U.S. Income Tax Return for Real Estate Investment Trusts	S-Corp	Sub-Chapter S 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

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

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 at <https://www.tax.newmexico.gov/forms-publications/>. Click on **Income Taxes** and select **Pass-Through Entity (PTEs)- Current Year** folder.

Important: File Returns on Approved State Forms. Always submit 2023 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.

Required Attachments to Form PTE

Your return can be processed more quickly if you submit all

INSTRUCTIONS FOR 2023 PTE GENERAL INSTRUCTION

required forms, schedules, and attachments in the following sequence:

- PTE, *New Mexico Pass-Through Entities Tax Return*
 - PTE-A, *New Mexico Apportionment Factors*
 - PTE-B, *Allocated Non-business Income Taxable to Owners*
 - PTE-D, *Detail of Owner Withholding, Composite Tax and Entity-level tax*
- PTE-ES, *Pass-Through Entities Estimated Tax Payment Voucher*
- PTE-PV, *Pass-Through Entities Penalty Payment Voucher*
- *Extension Payment Voucher*
- RPD-41373, *Application for Refund of Tax Withheld From Pass-Through Entities*
- 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.

Other Forms or Attachments You May Have to File

If the PTE is not required to electronically file because it has 50 or fewer payees or has obtained an exception for electronically filing from the Department, submit the completed PTE return by mail.

If a PTE has 51 or more payees who receive New Mexico net income, the PTE is required to electronically file their PTE return in TAP or by using an approved third party software.

A copy of the **approved federal extension or the approved New Mexico extension** if the return is filed after the original due date of the return. If a copy is omitted, a late-filing penalty will be assessed.

All annual returns and withholding statements issued to the entity. Attach a copy of all annual 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.

Amended Returns

To amend a PTE return, follow these steps:

1. Complete the PTE return for the year amended. Self-generated schedules or other documents will not be accepted in lieu of a completed and accurate return.
2. Check the "Amended" box **and** indicate the **Type** of amended return. If applicable, provide the **Final Determination Date**. If you make the election under 7-1-13(G) to pay, check the box.
3. Attach all schedules previously filed with the original return.

For more detailed information related to Amended Returns see box instructions for boxes **A** and **B** on for Form PTE on page 8.

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.

INSTRUCTIONS FOR 2023 PTE GENERAL INSTRUCTION

PAYMENTS AND REFUNDS

Payments

The following payment voucher types are available:

- PTE-ES, Estimated Payment Voucher
- PTE-PV, Return Payment Voucher
- PTE-EXT, Extension Payment Voucher

Pay Online

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 a credit card. A convenience fee 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.

Penalty

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 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.

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.

Payment Vouchers

The Department uses high-speed scanners, a quality form helps ensure accuracy. **Do not photocopy and be sure to 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 "2023 PTE" 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.

Requesting a Refund or that an Overpayment be Carried Forward

APTE may request a refund of withholding or other payments, by using Form RPD-41373, *Application for Refund of Tax Withheld From Pass-Through Entities*, to request a refund, or have an overpayment of tax be applied to the next tax year. 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 also pass the tax withheld to its owners.

Claiming a Refund of Withholding Against the PTE

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 the PTE return. The forms 1099-Misc, RPD-41359, or RPD-41285 must be issued to the PTE.

When requesting a refund, or that an overpayment be carried forward to the next tax year, the PTE may attach a completed Form RPD-41373 to the PTE return in the order shown on page 6.

INSTRUCTIONS FOR 2023 PTE FORM PTE

LINE INSTRUCTIONS PTE PAGE 1

PTE Return Page 1

Taxpayer Information Data Block

Complete the taxpayer information at the top of the PTE return. Type or print the correct name, address, ZIP code, all applicable identification numbers (FEIN, NMBTIN, NAICS), in the spaces provided.

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.

In the box provided on the return for **Federal Due Date**, enter the original due date of the required federal return for the PTE. If the federal return provides an electronic due date for that return, enter that date. The original federal due date is not the extension due date.

In the box provided on the return for **Extended Due Date**,

enter the date of the federal extension or the date of the New Mexico extension.

Box A

Indicate if the return is an original return by marking the box.

Box B

Indicate if the return is an amended return by marking the box and continue to lines B.(i) and B.(ii) for **Type** and **Date** below.

Line B.(i) Type. (Required) Review table **T1. Amended Reasons** below and determine which Amended Reason fits your tax situation. Carry the two-digit *Type Code* to B.(i) on page 1 of your return.

Line B.(ii) Date. If your amended reason is due to an RAR (Type 01) or FAR (Type 03) provide the **Final Determination Date** on this line. **Important:** Format requirement MM/DD/CCYY.

Line B.(iii) 7-1-13(G) Payment Election. For federal adjustments made with Final Determination Dates occurring on or after January 1, 2022, legislative changes made in

T1. Amended Reasons		
Type Code	Amended Reason	Amended Description
01	Amended- RAR	Report changes resulting from an IRS audit and their Revenue Agent's Report (RAR) within 180 days of the date that the federal adjustments are final. Attach a copy of the RAR including spreadsheets that detail the federal adjustments by company name.
02	Amended- Capital Loss	A taxpayer may carry back a federal capital loss as allowed by the IRC only if it does not increase or create a net operating loss in the tax year to which it is carried back. For the Department to process the amended to carry back a capital loss, always include the following: <ul style="list-style-type: none"> ● A schedule showing the application of the capital loss for each carryback and carryover year ● A copy of federal Form 1139 or 1120X filed with the IRS. A taxpayer's capital loss may not be carried back or forward to any other taxpayer. If the taxpayer is a filing group, its capital losses may not be carried back or forward to offset any other group's or corporation's taxable income.
03	Amended- FAR	Federal adjustments arising from a partnership level audit or an administrative adjustment request. Note: This amendment reason is sufficient to fulfil the Federal Adjustment Report (FAR) required by Section 7-1-13 NMSA 1978. <ul style="list-style-type: none"> ● In case of an audited partnership, file the returns required to be filed no later than 90 days after the final determination date. ● In the case of a tiered partner of an audited partnership, file the returns required no later than 90 days after the final determination date. ● For taxable direct partners of the audited partnership, no later than 180 days after the final determination date ● For taxable indirect partners of the audited partnership, no later than 180 days after the time for the audited partnership's filing and furnishing statements to tiered partnerships and their partners as established by the IRC.
04	Amended- Error on Original	If you are amending due to making an error on your original return filing (ie. calculation errors, misreported figures, etc.), attach an explanation for all changes.
05	Amended- Other	If the amended return reports changes other than the reasons provided above, attach copies of all applicable federal forms, schedules, and attach an explanation for all changes.

INSTRUCTIONS FOR 2023 PTE FORM PTE

LINE INSTRUCTIONS PTE PAGE 1

2021 under Senate Bill 410 allow for an election to pay in lieu of taxes owed by direct or indirect taxable partners under Section 7-1-13(G) NMSA 1978.

Important: If you are making the election under this section you must check the box. This will notify the Department to your election.

(G): The election provided by this subsection applies only to federal adjustments other than the distributive share of federal adjustments that must be included in the unitary business income of any direct or indirect corporate partner; provided that this can be reasonably determined, or federal adjustments resulting from an administrative adjustment request. A partnership making an election pursuant to this subsection shall:

- (1) file a completed federal adjustments report and notify the department that it is making the election pursuant to this subsection; and
- (2) pay an amount, determined as follows, in lieu of taxes owed by its direct and indirect taxable partners:
 - (a) exclude from the total final federal adjustments the distributive share reported to a direct partner that is an exempt partner unless the adjustment represents unrelated business taxable income;
 - (b) include only the portion of the total federal adjustment to distributive shares of partners taken into account pursuant to Section 6225(b)(2) of the Internal Revenue Code;
 - (c) apportion and allocate the adjustments as provided by the Uniform Division of Income for Tax Purposes Act as applied at the partnership level following any Department regulations adopted for this purpose;
 - (d) multiply the resulting amount by the highest tax rate provided by Section 7-2A-5 NMSA 1978; and
 - (e) add to the amount calculated pursuant to Subparagraph (d) of this paragraph an amount of penalty and interest computed pursuant to the Tax Administration Act.

Note: A complete amended return indicating **Amended-FAR** is sufficient to meet the requirement of filing a Federal Adjustment Report (FAR) with the New Mexico Taxation and Revenue Department under Section 7-1-13 NMSA 1978.

Box C. Mark the legal entity type that applies to you
Mark the box that indicates if your entity is an LLC or Partnership.

Box D. Mark the box if the pass-through entity is electing to file and pay entity-level tax for this tax year. This election is binding on all members of the entity. The PTE calculates the distributed net income subject to entity-level tax in Section 2 of this return and will pay tax directly on this income. All owners whose income is included in distributed net income subject to entity-level tax calculated in Section 2 will be allo-

cated a share of the entity-level tax paid and be able to claim a credit for the tax paid on the owner's PIT and CIT return.

Section 1. Computation of net income for withholding tax and composite income tax of electing owners.

Note: If electing only to file entity-level tax, only lines 1-12 may need to be completed. If electing to file entity-level tax, the net income subject to PTE withholding on line 13 will only include income of owners whose income is not included in distributed net income subject to entity-level tax on line 27. If all net income of the entity is included on line 27, there is no requirement to withhold.

Line 1. Ordinary business income. Enter the ordinary income or loss as recognized on federal tax return Form 1065, Schedule K.

Line 2. Other income (loss) from federal Form 1065, Schedule K. Enter the summation of all other income or losses recognized on federal tax return Form 1065, Schedule K.

Line 3. Interest income from municipal bonds, excluding New Mexico bonds. Enter interest income from non-New Mexico state and local bonds not subject to federal income tax under IRC Section 103.

Line 4. Subtotal of lines 1, 2, and 3.

Line 5. Interest from U.S. government obligations or federally-taxed New Mexico bonds. 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 6. Allowable deductions from Schedule K. Enter the

INSTRUCTIONS FOR 2023 PTE FORM PTE

LINE INSTRUCTIONS PTE PAGE 1 & 2

allowable deductions recognized on the federal tax return Form 1065, Schedule K. Neither net operating loss carry-over nor oil and gas depletion deductions are allowed to be claimed at the entity level on the PTE return.

Line 7. Deduction for certain expenses related to a New Mexico licensed cannabis business. A licensed cannabis business may enter an amount equal to any expenditure that is eligible to be claimed as a federal income tax deduction but is disallowed pursuant to Section 280E of the Internal Revenue Code, as that section may be amended or renumbered.

Line 8. Total allocated income (from PTE-B, line 8, column 1). Enter total allocated income from Schedule PTE-B, column 1, line 8, if applicable.

Line 9. Apportionable income. Add lines 5, 6, 7 and 8, then subtract from line 4.

Line 10. Average New Mexico percentage. Enter the **Average New Mexico Percentage** from Schedule PTE-A, line 5.

Line 11. New Mexico apportionable income. Multiply the amount on line 9 by the percentage on line 10.

Line 12. New Mexico allocated non-business income. Enter New Mexico allocated income from PTE-B, column 2, line 9, if applicable.

Line 13. New Mexico net income. Enter the sum of lines 11 and 12.

Line 14. Amount of net income from line 13 that is subject to PTE withholding tax. Enter the portion of New Mexico net income that the entity has determined is subject to PTE withholding tax, including any additional amounts that the entity has decided to withhold on for owners. Note that no withholding is due with respect to any net income on which the entity pays tax directly, i.e. any amount included in Section 2, line 27. For more information on what income distributed to owners is required to have New Mexico withholding, see the introduction to the PTE-D instructions on page 5 and the reason codes for not withholding on page 19.

Line 15. Withholding tax rate. The withholding tax rate is 5.9%.

Line 16. Amount of withholding tax on net income. Multiply the amount on line 14 by the percentage on line 15 and enter it here.

Line 17. Total withholding tax passed directly to owners.

This is the amount of withholding tax that was withheld from a payment made to the PTE and that was passed directly on to an owner or owners of the PTE.

Line 18. Total withholding tax. Subtract line 17 from line 16.

Line 19. Amount of net income from line 13 subject to composite income tax for electing owners. The portion of net income distributed to owners that have elected to have the entity file composite income tax on their behalf.

Line 20. Composite income tax rate. The composite tax rate is 5.9%.

Line 21. Total composite tax. Multiply the amount on line 19 by the percentage on line 20 and enter it here.

Taxpayer's Signature and Preparer Information

Taxpayer's Signature

An officer, member, or partner of the entity must sign and date the return. Enter the following information:

- Signature
- Date
- Title [of officer]
- Contact phone number
- Taxpayer's email address

Paid Preparer's Use Only

Any person, other than an employee of the corporation, who prepares the return for compensation must also sign and date the return. A preparer other than an employee of the corporation is required to enter the following:

- New Mexico Business Tax Identification Number (NMBTIN), If the preparer has one (formally known as CRS number)
- FEIN, if applicable
- PTIN, the Preparer Tax Identification Number
- Preparer's phone number

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

PTE Return Page 2

Section 2.

Computation of entity-level tax.

Complete this section if electing to file and pay entity-level tax. If not electing to file entity-level tax, you may leave Section 2, lines 21 through 28, blank. The election to file

INSTRUCTIONS FOR 2023 PTE FORM PTE

LINE INSTRUCTIONS PTE PAGE 2

entity-level tax is binding on all owners of the pass-through entity whose income is included in the net income subject to entity-level tax.

Line 22. New Mexico net income from line 13. Enter the amount entered on line 13.

Line 23. Guaranteed payments required to be reported by partnerships. Enter the total amount of guaranteed payments made by partnerships, other than payments for premiums for health insurance paid by the partnership on behalf of a partner.

Line 24. Subtotal. Add lines 22 and 23.

Line 25. New Mexico net capital gains deduction. Enter the amount of net capital gains that may be deducted from net income pursuant to Section 7-2-34 NMSA 1978 for owners who are subject to the Income Tax Act. The PTE may deduct from net income all or part of net capital gains reported and claimed on the federal tax return that is allocated to owners who are **subject to personal income tax**. For purposes of this deduction, "net capital gains" are defined by Section 1222(11) of the Internal Revenue Code as the excess of net long-term capital gains over short-term capital losses for the tax year.

The PTE may deduct the greater of:

- 100% of the owner's net capital gains, not to exceed \$1,000; or
- 40% of the owner's net capital gains.

The PTE may claim only one-half of the net capital gains deduction allocated to an owner who files a married filing separate return. **IMPORTANT:** The PTE may not claim the net capital gains deduction in addition to the credit provided by the Venture Capital Investments Act.

Line 26. Distributions not subject to entity-level tax. Income of certain owners is not included in distributed net income, and the entity may not pay tax directly on such income. Income distributed to the following entities listed below are not subject to entity-level tax, and the taxpaying pass-through entity may not pay tax directly with respect to or on behalf of such owners.

Subtract from net income or guaranteed payments properly allocated or made to the following:

- (a) the United States, this state or a political subdivision of either;
- (b) a federally recognized Indian nation, tribe or pueblo located wholly or partially in New Mexico, or any political subdivision thereof;

(c) an organization that has been 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;

(d) a corporate partner that would properly include the income in the partner's New Mexico tax return as part of the partner's unitary business income; or

(e) a pass-through entity that is an owner of the electing pass-through entity;

Line 27. Distributed net income subject to entity-level tax. Add lines 25 and 26, then subtract this amount from line 24.

Line 28. Entity-level tax rate. The entity-level tax rate is 5.9%.

Line 29. Total entity-level tax. Multiply the amount on line 27 by the percentage on line 28.

Section 3. Payments and Credits.

30. Tax withheld from distributions of oil and gas proceeds made to this PTE. (attach 1099-Misc or Form RPD-41285). This is the total amount of tax withheld for the PTE from payments of oil and gas proceeds made to the PTE. Include a copy of each statement with the PTE this return.

31. Tax withheld from distributions of a pass-through entity made to this PTE. (attach 1099-Misc or Form RPD-41359). This is the total amount of tax withheld for the PTE from payments of another pass-through entity made to the PTE.

32. Estimated payments and extension payments. Enter the amount of estimated payments or extension payments made for this tax year.

33. Approved Film Production Tax Credit. If claiming the Film Production Tax Credit, attach the RPD-41228 claim form. See the **FYI-106, Claiming Business-Related Tax Credits for Individuals and Business**, for more information on this credit and the application process.

34. Approved New Film Production Tax Credit. (attach RPD-41228). See the **FYI-106, Claiming Business-Related Tax Credits for Individuals and Business**, for more information on this credit and the application process.

35. Approved New Mexico Film Partner New Film Production Credit. (attach RPD-41228). See the **FYI-106, Claiming Business-Related Tax Credits for Individuals and Business**, for more information on this credit and the application process.

INSTRUCTIONS FOR 2023 PTE FORM PTE

LINE INSTRUCTIONS PTE PAGE 2

36. Total payments and credits. Add lines 30 through 35.

Section 4. Tax due or overpayment.

37. Total withholding, composite, and entity-level tax. Add lines 18, 21 and 29.

38. Amended returns only: Enter 2023 refunds received and overpayments applied to 2024.

39. Subtotal of tax. Add line 37 and 38.

40. Tax due. If line 39 is greater than line 36, subtract line 36 from line 39.

41. Penalty. If the entity fails to file timely or to pay the amount on line 10 when due, add penalty on this line. Penalty is not to exceed 20% of the tax due, and may not be less than \$5.00.

Formula to Calculate Penalty

Penalty = tax due from line 10 x 2% x number of months or partial months past due date.

42. Interest. If the entity fails to file timely or to pay the amount on line 10 when due, add interest on this line. Interest accrues daily on the unpaid principal of tax due. The interest accrual rate can change on a quarterly basis.

Finding the Interest Rate for the Quarter

You can find the effective interest rates for each quarter in these ways:

- Go to www.tax.newmexico.gov. In the black navigation bar at the top, click **Individuals** and then under **File Your Taxes**, click **Penalty & Interest Rates**.
- <https://www.tax.newmexico.gov/individuals/file-your-taxes-overview/penalty-interest-rates/>
- Call (505) 827-0825 or toll free (866) 809-2335, or email CIT.TaxReturnHelp@tax.nm.gov.

Formula To Calculate Interest

Interest = tax due from line 10 x daily interest rate for the quarter x number of days late

43. Total amount due. Subtotal of lines 40, 41, and 42. This is the total amount due.

44. Overpayment. If line 36 is greater than 39, subtract 39 from 36. **A claim for refund for an overpayment on the PTE return requires a RPD-41373.** You must attach RPD-41373, *Application for Refund of Tax Withheld From Pass-Through Entities*, to claim a refund of the overpayment shown on line 44, or have the overpayment be applied to the next tax year. This includes an overpayment of composite income tax paid for owners or entity-level tax. Additional information about this requirement can be located under Section 7-1-23 NMSA 1978.

INSTRUCTIONS FOR 2023 PTE PTE-A

Line Instructions for the PTE-A and PTE-B

PTE-A

New Mexico Apportionment Factors, Lines 1-5

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-C return, line 9.

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.

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.

INSTRUCTIONS FOR 2023 PTE FORM INSTRUCTIONS

Line Instructions for the PTE-A and PTE-B

"Sales" means all gross receipts from transactions and activities in the regular course of business.

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

Sales of tangible personal property are New Mexico sales if either of the following is true. The property is:

- Delivered or shipped to a purchaser other than the U.S. government within New Mexico regardless of the FOB (free on board) point or other conditions of the sale, **or**
- Shipped from an office, store, warehouse, factory, **or** other place of storage in New Mexico, **and**
 - The purchaser was the U.S. government, **or**
 - The taxpayer:
 - is not taxable in the state of the purchaser, **and**
 - did not make an election for apportionment of business income pursuant to Subsection B or C of Section 7-4-10 NMSA 1978.

Sales other than sales of tangible personal property are New Mexico sales if any of the following are true:

- In the case of sales, rental, lease or license of real property, if and to the extent the real property is located in this state;
- In the case of rental, lease or license of tangible personal property, if and to the extent the tangible personal property is
- located in this state;
- In the case of sale of a service, if and to the extent the service is delivered to a location in this state, and
- In the case of sale, rental, lease or license of intangible property, if and to the extent the intangible property is used in this state.
- Special rule: Gross receipts for the performance of personal services are attributable to this state to the extent such services are performed in this state.

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 Formulas

How to Make the Exclusion Election

To elect to use Exclusions 1, 2, or 3, 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@tax.nm.gov.

Election Period

If the election is made for taxable years beginning prior to January 1, 2020, it applies to the taxable year in which the election is made and to each taxable year thereafter for three years, or until the taxable year ending prior to January 1, 2020, whichever is earlier.

Elections made for a taxable year beginning on or after January 1, 2020, apply to the taxable year in which the election is made and to each taxable year thereafter until the taxpayer notifies the Department, in writing, that the election is terminated, except that the taxpayer shall not terminate the election until the method of apportioning business income has been used by the taxpayer for at least three consecutive taxable years, including a total of at least thirty-six calendar months.

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.

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

INSTRUCTIONS FOR 2023 PTE FORM INSTRUCTIONS

Line Instructions for the PTE-A and PTE-B

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 a single weighted calculation by dividing total sales within New Mexico by total everywhere sales.

The electing manufacturer must use the special factor method for a total of three consecutive tax years, covering at least 36 calendar months, or until the manufacturer notifies the Department in writing that the election is terminated.

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

Definition of Manufacturing

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

- a. construction;
- b. farming;
- c. power generation; provided that for taxable years beginning prior to January 1, 2024, "manufacturing" includes electricity generation at a facility that does not require location approval and a certificate of convenience and necessity prior to commencing construction or operation of the facility pursuant to the Public Utility Act;
- d. processing natural resources, including hydrocarbons; or
- e. processing or preparation of meals for immediate consumption.

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, 2014, the election allows taxpayers to apportion the business income to New Mexico using a single weighted calculation by dividing total sales within New Mexico by total everywhere sales.

If a filing group, or a taxpayer that is not a member of a filing group, has a headquarters operation in New Mexico, the filing group or the taxpayer may elect to have business income apportioned to this state by multiplying the income by the sales factor for the taxable year.

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

Definition of Headquarters

PTE return, PTE-A, B, and D

"Headquarters operation" means:

1. the center of operations of a business:
 - a. where corporate staff employees are physically employed;
 - b. where centralized functions are performed, including administrative, planning, managerial, human resources, purchasing, information technology and accounting, but not including a call center;
 - c. 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
2. the center of operations of a business:
 - a. the function and purpose of which is to manage and direct most aspects of one or more centralized functions; and
 - b. from which final authority over one or more centralized functions is issued.

Complete the property factor and payroll factor information in column 1 and column 2. Although an election for a single weighted formula has been made, this information is still necessary. The percentage factors for property and payroll are not included in the calculation of the Average New Mexico Percentage.

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, an election may be made for, or the Department may require, the exclusion of any one or more insignificant factors. A factor is considered insignificant if column 1 (the denominator) is less than 3% of net income.

PTE-B

Allocated Non-Business Income Taxable to Owners, Lines 1-9

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

INSTRUCTIONS FOR 2023 PTE FORM INSTRUCTIONS

Line Instructions for the PTE-B

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 non-business profit sale of assets (loss). 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.

Line 8. Total allocated income. Add lines 1 through 7 Column 1. Enter on PTE, line 8.

Line 9. Total New Mexico allocated income. Add lines 1 through 7, Column 2. Enter on PTE, line 12.

INSTRUCTIONS FOR 2023 PTE PTE-D

PTE-D Instructions

PTE-D

Detail of Owner Withholding, Composite Tax and Entity-level tax

Annually, a pass-through entity (PTE) subject to withholding tax from the allocable net income of its owners, partners, or members (owners), according to the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act (Sections 7-3A-1 through 7-3A-10 NMSA 1978), will file the New Mexico Pass-Through Entities Return and use the PTE-D, Detail of Owner Withholding, Composite Tax and Entity-level tax, to report withholding for each owner, composite income tax for any electing owners, and/or the amount of entity-level tax paid on behalf of each owner. The PTE-D:

- Lists only payees who have New Mexico net allocable income and losses
- Reports each owner's share of net income allocable to New Mexico for withholding tax and reports the owner's share of withholding
- Reports the amount of composite income tax paid for any electing owners
- If electing to file entity-level tax, reports each owner's share of allocable net income subject to entity-level tax

The PTE reports all resident and non-resident owners on the PTE-D, even when no tax has been withheld. Do not include owners who did not receive New Mexico allocated net income.

Except for a PTE that is a personal services business, if the PTE entered into an agreement with the owner for the owner to file and pay tax due on the owner's share of allocable net income of the PTE, the PTE enters **Code 2** in the **Reason Code** box 6.

"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.

Note: A PTE that is a personal services business cannot enter into an agreement with its owners using RPD-41353, *Owner's or Remittee's Agreement to Pay Withholding On Behalf of a Pass-Through Entity or Remitter*.

To complete the PTE-D and PTE-D Supplemental, do the following:

1. Determine every PTE owner with New Mexico net allocable income or loss.
2. Calculate the share of withholding tax paid on each owner's behalf if required.
3. Calculate the composite income tax paid for any electing owners.
4. If the entity has elected to file entity-level tax, determine each owner's share of allocable net income subject to entity-level tax. For owners that are subject to personal income tax, the entity will adjust the amount of allocable net income subject to entity-level tax with respect to the capital gains deduction allowed for these taxpayers. Be sure that for owners that are subject to corporate income tax, or owners that are another pass-through entity, the owner's allocable share of net income subject to entity-level tax does not reflect this deduction.
5. If the entity has elected to file entity-level tax, determine the amount of each owner's share of entity-level tax. Adjust the amount by any credit for entity-level tax that the PTE has been allocated by another pass-through entity. Since the PTE is unable to directly claim a credit for entity-level tax on its own return, the PTE will allocate any credit for entity-level tax to each of its owners, allowing them to eventually claim the credit on their PIT or CIT returns.
6. Complete all fields for each PTE as described in the **Line Instructions** section below.
7. If the PTE has more than 8 owners, print more copies of the PTE Supplemental directly from the website.
NOTE: If you use more than 12 additional pages (over 51 owners), you must file electronically.
8. Attach all PTE Supplemental pages to the first page of the PTE-D.
IMPORTANT: Do not use a copy machine to make more pages. Copied forms delay processing your report because high-throughput scanning machines have difficulty reading copied barcodes. It is easier for the machines to read printed barcodes than photocopied barcodes.

Pass-Through Entity Withholding Tax Rate Table

If your report period begins on or after:	The effective rate is:
Jan. 1, 2011	4.9%
Jan. 1, 2021	5.9%

T2. Reason Codes: Withholding Not Required

Reason Codes	Explanation
Code 1	<p>Documentation is on file showing that the owner maintains its place of business or residence in New Mexico and any of the following is true:</p> <ul style="list-style-type: none"> • The owner's address on Form 1099-MISC, pro forma 1099-MISC, or RPD-41359, <i>Annual Statement of Pass-Through Entity Withholding</i>, is a New Mexico address. • An individual has a signed RPD-41354, <i>Declaration of Principal Place of Business or Residence in New Mexico</i>, on file that declares the individual is a resident of New Mexico and the physical location of the individual's abode is in New Mexico. • A corporation has a signed RPD-41354, <i>Declaration of Principal Place of Business or Residence in New Mexico</i>, on file that declares the corporation's principal place of business is in New Mexico. <p>NOTE: Keep RPD-41354 in your files with the PTE's other records. Unless you receive a Department request that requires you to furnish a true and correct copy of this agreement, do not submit RPD-41354 to the Department.</p> <ul style="list-style-type: none"> • A corporation incorporated in New Mexico has on file Articles of Incorporation and sufficient portions of those papers demonstrate incorporation in New Mexico, or information from the Secretary of State, Corporation Bureau website indicates the corporation is a New Mexico corporation in good standing and shows its address.
Code 2	<p>Documentation is on file showing that the PTE and owner executed the tax agreement RPD-41353, in which the owner agreed to report and pay the amount to the Department on behalf of the owner. If the PTE has on file a signed RPD-41353, <i>Owner's or Remittee's Agreement to Pay Withholding on Behalf of a Pass-through Entity or Remitter</i>, use this code.</p> <p>The owner satisfies the terms of the agreement by filing a New Mexico income tax return and paying the tax due. If the Department notifies the PTE that the owner failed to remit the required payment, the RPD-41353 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 periods that ended before the Department's notification.</p>
Code 3	<p>Documentation shows the U.S. Commissioner of Internal Revenue granted the owner exemption from federal income tax as an organization described in Section 501(c)(3) of the Internal Revenue Code. In addition to this documentation, on file is a copy of the owner's Form W-9 or a copy of the IRS determination letter. IMPORTANT: If the income constitutes unrelated income, the obligation to deduct and withhold from payments applies to these organizations.</p>
Code 4	<p>Documentation is on file showing the owner is the U.S., New Mexico, or any agency, instrumentality, or political subdivision.</p>
Code 5	<p>Documentation is on file showing the owner is a federally-recognized Indian nation, tribe, or pueblo or any agency, instrumentality, or political subdivision thereof.</p>
Code 6	<p>Documentation is on file showing the PTE's inability to make payment of withholding from net income for the tax year due to non-availability of cash, or due to contracts and other binding written covenants with unrelated third parties. However, if the PTE made cash payment(s) to any owner during the tax year, the PTE is liable for payment of the withholding amount due up to the extent of those cash payment(s).</p>
Code 7	<p>The PTE made a timely election for federal income tax purposes that changes the net income of a PTE in a prior quarter.</p>
Code 8	<p>For tax years 2014 through 2018, the PTE elected pursuant to Section 26 U.S.C .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.</p>
Code 9	<p>The owner is an insurance company, reciprocal, or interinsurance exchange that pays a premium tax to New Mexico and falls under the provisions of Section 59A-6-6 NMSA 1978.</p>
Code 10	<p>The amount to withhold from an owner's allocable share of the net income in any calendar year is less than \$100.</p>
Code 11	<p>The owner's allocable share of net income is subject to entity-level tax of an electing PTE.</p>

INSTRUCTIONS FOR 2023 PTE PTE-D

PTE-D Line Instructions

Line Instructions for PTE-D

Line 1a. Owner's SSN/ITIN/FEIN. This information is required.

Line 1b. ID Provided. Check the box to indicate which ID type was provided on line 1a. SSN/ITIN or FEIN

Line 2. Owner's Name. Provide the owners first, middle, and last name.

Line 3a. Owner's Address (Number Street). This field allows for two row entry, please provide full address.

Line 3b. City. Enter the City for the address provided on 3a.

Line 3c. State. Enter in the State for the address provided on 3a.

Line 3d. ZIP Code/ Postal Code. Enter the ZIP code and if applicable the Postal code for the address provided on 3a.

Line 3e. Mark if outside of the US/Country Code. If outside of the US check the box and provide the two character country code in the space allowed. You can find the country codes listed on the IRS website: <https://www.irs.gov/e-file-providers/foreign-country-code-listing-for-modernized-e-file>.

Line 4. Residency Status. Provide the owner's New Mexico residency status.

- N- Non-resident
- R- Resident

Line 5. Withholding required.

- **Y** for **Yes**, withholding required, skip line 6.
- **N** for **No**, withholding not required. If **No**, line 6 is required.

Line 6. Reason Code. Enter the **Reason Code** in the box to identify the reasonable cause for not withholding. New Mexico regulations recognize the following reasonable causes for not withholding. See table **T2. Reason Codes: Withholding Not Required**, on page 19.

Approval Required for Other Reasonable Causes

If you believe the PTE has a valid reason for not withholding from an owner, other than the reasons listed on page 19, the Secretary's approval of your reason before filing gives the

PTE the right not to withhold. A request requires detailed information to support an alternative reasonable cause for not withholding.

To request the Secretary's approval, submit a written request to:

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

Line 7. Owner's Share of allocable net income. Enter the owner's share of the PTE's allocable net income. The total of all line 7 amounts for all schedules corresponds to the amount on the PTE page 1, line 13, **New Mexico net income**.

Line 8. Owner's share of withholding tax. Enter the owner's share of withholding tax. The total of all line 8 amounts for all schedules corresponds to the amount on the PTE page 1, line 18, **Total amount of withholding tax**.

Note: When determining the amount of tax to withhold for each owner, see Adjustments To The Amount Withheld at the end of these instructions.

Line 9. Owner's Percentage. Enter the owner's percentage of ownership.

Line 10. Amount of owner composite tax. Amount of composite tax the PTE has paid for the owner. The total of all line 10 amounts for all schedules corresponds to the amount on the PTE page 1, line 21, **Total amount of composite income tax**.

Line 11. Owner share of allocable net income subject to entity-level tax. Enter the amount of allocable net income subject to entity level for this owner. The total of all line 11 amounts for all schedules corresponds to the amount on the PTE page 2, line 27, **New Mexico net income subject to entity-level tax**.

Line 12. Owner share of entity-level tax. Enter the share of entity-level tax for this owner. This line may include amounts of entity-level tax passed on from other PTEs to the owner.

INSTRUCTIONS FOR 2023 PTE PTE-D

PTE-D Line Instructions

Adjustments To The Amount Withheld

A PTE may make the following adjustments to the amount withheld:

- You may reduce, but not below zero, the amount of tax withheld from the owner's net income by the amount required to withhold for oil and gas proceeds.
- If a PTE 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.

More About RPD-41353

RPD-41353 is required documentation showing the PTE and non-resident owner entered into an agreement that the non-resident owner agrees to pay New Mexico tax on the owner's share of the PTE's allocable net income. All PTEs except personal services businesses may enter into this agreement with its owners. Keep RPD-41353 in your files with the PTE's other records. Unless you receive a Department request that requires you to furnish a true and correct copy of this agreement, do not submit RPD-41353 to the Department.

INSTRUCTIONS FOR 2023 PTE INSTRUCTIONS

Definitions

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.

Distributed net income of a pass-through entity shall equal the amount of net income of the pass-through entity allocated and apportioned to New Mexico pursuant to the Uniform Division of Income for Tax Purposes Act, less allocations of net income from that amount to:

- (1) the United States, this state or a political subdivision of either;
- (2) a federally recognized Indian nation, tribe or pueblo located wholly or partially in New Mexico, or any political subdivision thereof;
- (3) an organization that has been 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; or
- (4) a corporate partner that would properly include the income in the partner's New Mexico tax return as part of the partner's unitary business income.

Net income means, for any 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 U.S. 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.

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 PTE. Owner also means a performing artist to whom payments are due from a personal services business.

Pass-through entity means a personal services business or any other business association other than any one of the following:

- 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
- A publicly traded partnership as defined in Section 7704(b) of the Internal Revenue Code

Partnership means a combination of persons, including a 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.

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.

New Mexico Taxpayer Bill of Rights

Most tax transactions happen without problems. Sometimes, thought, troubles arise through misunderstanding, mathematical error, missed deadlines, lost papers, high volume of transactions and many other situations. Changes in the law may make earlier information outdated. Over the years the Legislature and the Department have created ways to handle difficulties according to the provisions of the state tax code. Following are some of your rights as outlined 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 have the Department conduct its audits in a timely and efficient manner and be entitled to the correct calculation of interest as provided in the Tax Administration Act under Section 7-1-67 and 7-1-68 NMSA 1978;
- The right to simple, non-technical information explaining procedures, remedies and rights during audit, protest, appeals 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 otherwise specified by law in Sections 7-1-8 through 7-1-8.11 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 apply to pay your tax obligations by installment payment agreements according to the provisions of Section 7-1-21 NMSA 1978.

Confidentiality Provisions:

Statutes protecting the privacy of your taxes are strict and are outlined in Sections 7-1-8 through 7-1-8.11 NMSA 1978. Section 7-1-8.2 NMSA 1978 limits requiring the Department to answer questions about whether a taxpayer is registered to do business in New Mexico or is registered for other tax programs. It does not allow employees to say whether you have filed a return. Employees may discuss your account only with you or your authorized representative. A hearing officer's written ruling on questions of evidence or procedure pursuant to the Administrative Hearings Office Act are in the public domain. The name and identification number of the taxpayer requesting the ruling are not public record. Public record includes 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 taxpayer pays. 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 reveal to the Gaming Control Board the tax returns of license applicants and their affiliates.

Audit Provisions:

The Department 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 matters 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 120 days from the filing date to approve or deny a statutory tax credit. If it does not act, the credit is approved. For more information see Section 7-1-29.2 NMSA 1978.

Refund Offset:

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 to 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.