
2010 NEW MEXICO
FORM PTE
INCOME AND INFORMATION RETURN
AND INSTRUCTIONS FOR PASS-THROUGH ENTITIES

Please note that dollar rounding must be used when preparing all income tax returns. We also have listed the attachments required for your return to be complete. Each New Mexico General Fund recipient appreciates your cooperation and compliance.

IMPORTANT. . .

◆ **Form PTE-EXT, New Mexico 2010 Income and Information Return for Pass-through Entities Extension Payment Voucher** - has been created for pass-through entities wishing to make an extension payment. An extension payment is made when either a federal automatic extension has been obtained or a New Mexico extension has been obtained, and a payment towards the tax liability is made to avoid the accrual of interest. When making a payment towards a final return, continue to use Form PTE-PV, Pass-through Entity Income Tax Payment Voucher.

◆ **Important Federal Changes Affecting Direct Deposits and Electronic Checks** - Effective September 24, 2009, in order to comply with new federal banking rules, anyone wishing to have their refund directly deposited into their banking account or who wishes to make an "electronic check" payment through the Department's web site must disclose whether the funds for the payment come from or are delivered to an account located outside the territorial jurisdiction of the United States. If you do not answer the question your electronic transfer request will not be honored. If you answer the question incorrectly, your payment or refund may be delayed, rejected or frozen by the National Automated Clearing House Association (NACHA) or the Office of Foreign Assets Control (OFAC) and you may be subject to penalties and interest for non-payment of taxes or any penalties assessed by OFAC. The Department does not process these international electronic transactions. If the funds for the payment or the account to which a refund is to be delivered, is located outside the territorial jurisdiction of the United States, you will be directed to select a different method of payment or refund delivery and your options will be explained.

A financial institution is located within the territorial jurisdiction of the United States if it is:

- located within the United States,
- located on a U.S. military base; or
- located in American Samoa, Guam, the Northern Mariana Islands, Puerto Rico or the U.S. Virgin Islands.

See also, *Other Changes* inside this cover.

FOR MORE INFORMATION ON . . .

- **Profit Corporate Report (filed every other year) and Non-Profit Corporate Report (filed annually), contact:**
Public Regulation Commission
P. O. Drawer 1269
Santa Fe, NM 87504-1269
(505) 827-4508

THIS PACKET CONTAINS:

- PTE Form and Instructions
 - PTE-1, Income Taxable to Owners Schedule
 - PTE-A, New Mexico Apportionment Factors Schedule
 - PTE-B, Allocated Non-business Income Taxable to Owners
 - PTE-C, Allocated and Apportioned Income Taxed to S Corporations Schedule
 - PTE-CR, Non-refundable Credit Schedule
 - PTE-D, Owner Information Schedule
 - PTE-TA, Non-resident Owner Income Tax Agreement
 - PTE-PV, Income Tax Payment Voucher
 - PTE-EXT, Extension Tax Payment Voucher
 - W-K 2010, Income and Withholding from Pass-Through Entity Statement
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Privacy Notification

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

Other Changes

- ◆ **Form PTE** - Taxpayers or taxpayer representatives are required to provide an e-mail address in the signature block on the bottom of Form PTE.
- ◆ **New line on Form PTE-CR, Geothermal Ground-Coupled Heat Pump Tax Credit** - Legislation allows taxpayers who purchase and install after January 1, 2010 but before December 31, 2020, a geothermal ground-coupled heat pump in a residence, business or agricultural enterprise in New Mexico owned by that taxpayer a tax credit of up to 30% of the purchase and installation costs of the system (not to exceed \$9,000) See Form RPD-41346, *Geothermal Ground-Coupled Heat Pump Tax Credit Claim Form*, for details.
- ◆ The **Research and Development Small Business Tax Credit** is not available for taxpayers filing the 2010 PTE return. The credit was no longer available for periods after June 30, 2009.

For details about New Mexico tax law changes enacted during 2010, see Publication B-100.22, 2010 Legislative Summary. Legislative summaries are available for each year, providing a brief description of new legislation affecting the Taxation and Revenue Department. Visit our web page and click on publications.

Your Electronic Services

- ◆ **Direct Deposit** - Taxpayers due a refund may have their refunds deposited directly into their bank accounts through "Refund Express." See Page 1, Form PTE
 - ◆ **Pay via credit card or electronic check** - Taxpayers may pay taxes over the Internet with Visa, MasterCard or American Express cards. A 2.49% convenience fee calculated on the amount of the transaction covers costs that the companies bill the state when you use your card. **You may also pay by electronic check at no charge.** An electronic check authorizes TRD to debit your checking account in the amount and on the date you specify.
 - ◆ **Download forms, publications and brochures or ask a question** - Taxpayers may access forms, publications and brochures from our website. You can ask general questions about New Mexico taxes using the e-mail address policy.office@state.nm.us.
 - ◆ **New Mexico Taxpayer Access Point: TAP is a secure resource that allows taxpayers to check the status of tax accounts online, make payments, and change their address.** Access our web site and select the Taxpayer Access Point (TAP) link. This resource is currently available for the following tax programs: Personal Income Tax (PIT), Corporate Income Tax (CIT) including Pass Through Entity (PTE), Combined Reporting System (CRS), E911 Services Surcharge (911), Combined Fuel Tax (CFT), Cigarette Tax (CIG), Fiduciary Income Tax (FID), Bingo and Raffle Tax (BRT), Conservation Tax (CNS), Gaming Operator Tax (GMO), Gaming MFG and Distributor Tax (GMD), Water Conservation Fee (H2O), OGP Withholding Tax (OGP), Local Liquor Excise Tax (LLQ), Liquor Excise Tax (LIQ), Resource Excise Tax (RES), Severance Tax (SEV), Alternative Fuels Excise Tax (AFD), Tobacco Products Tax (TPT), Telecommunications Relay Service Surcharge (TRS), Weight Distance Tax (WDT), and Workers' Compensation Fee (WKC). **The status of your refund is available through the "Where is my Refund" link** -- for PIT, CIT and CRS tax programs. You will need your social security number (SSN), Federal Employer Identification Number (FEIN), or CRS Identification number and the amount of refund due.
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Contact our local offices . . .

Local Taxation and Revenue Department Offices: Local tax offices can provide full service and information about New Mexico's taxes, programs and forms and specific information about your filing situation. If you have questions or require additional information, you may contact your local Taxation and Revenue Department Office.

ALBUQUERQUE:

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

ROSWELL:

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

FARMINGTON:

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

SANTA FE:

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

LAS CRUCES:

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

In addition . . .

You may order forms and instructions by calling (505) 827-2206 (not a toll-free number), or you may write to:

Taxation and Revenue Department
P.O. Box 2629
Santa Fe, NM 87504-2629.

Forms, instructions and general information brochures are available on the Department's Internet home page.

Our address is:

www.tax.newmexico.gov

**2010 New Mexico
Instructions for Income and Information Return
for Pass-Through Entities
Form PTE**

READ THE INSTRUCTIONS CAREFULLY. They will answer most questions, save time and may save money.
File your return as early as possible. If you have additional questions, write to:

New Mexico Taxation and Revenue Department
ATTENTION: Corporate Income and Franchise Tax
P. O. Box 25127
Santa Fe, New Mexico 87504-5127
or visit our website at:
www.tax.newmexico.gov

GENERAL INSTRUCTIONS

**ENTITIES REQUIRED TO FILE A
NEW MEXICO INCOME AND
INFORMATION RETURN FOR
PASS-THROUGH ENTITIES**

Corporations electing to be taxed as S corporations for federal income tax purposes or 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 of income must file a New Mexico *Income and Information Return for Pass-Through Entities* (PTE) 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.

EXCEPTION: The following entities are exempt and are not required to file a New Mexico *Income and Information Return for Pass-Through Entities*:

- insurance companies and reciprocal or inter-insurance exchanges which pay a premium tax to New Mexico;
- estates and trusts;
- investment partnerships, effective for tax years beginning on or after January 1, 2002, and
- rural electric cooperatives established under the Rural Electric Cooperative Act (Sec. 62-15-28 NMSA 1978).

**ENTITIES REQUIRED TO PAY THE
NEW MEXICO FRANCHISE TAX**

All S corporations engaging in business in New Mexico and every domestic or foreign corporation having or exercising its corporate franchise in this state, **whether actively engaged in business or not**, must file a New Mexico *Income and Information Return for Pass-Through Entities* and pay the \$50 franchise tax even if no income tax is due. This includes "disregarded" corporations doing business in New Mexico. The only exceptions are:

- corporations exempt from federal income tax under the Internal Revenue Code that have no unrelated business income;
- insurance companies and reciprocal or inter-insurance exchanges which pay a premium tax to New Mexico, and
- rural electric cooperatives established under the Rural Electric Cooperative Act.

Limited liability companies that are required or elect to file a Federal S Corporation Income Tax Return pay the New Mexico Franchise Tax.

Taxpayers who have no nexus in New Mexico pursuant to P.L. 86-272 are not immune from paying New Mexico Franchise Tax.

WHICH RETURN TO FILE

FISCAL YEAR TAXPAYERS must file a 2010 return for a fiscal year beginning in 2010 and ending in 2011.

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

- New Mexico *Corporate Income and Franchise Tax Return* (CIT-1),
- New Mexico *Personal Income Tax Return* (PIT-1), or
- New Mexico *Fiduciary Income Tax Return* (FID-1).

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.

A Real Estate Investment Trust (REIT), which does business in New Mexico and files a federal Form 1120-REIT, must file a New Mexico PTE return.

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 orga-

nized 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.

Asingle-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.

Estates and trusts are subject to New Mexico personal income tax. Except for grantor trusts, the fiduciary for an estate or trust must file Form FID-1.

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 Form FID-1.

NOTE: All New Mexico Taxation and Revenue Department forms, instructions and information brochures are available on the Department's Internet home page. Our address is: www.tax.newmexico.gov. Forms are also available at any New Mexico Taxation and Revenue Department district office or you may request forms by calling 505-827-2206 (not a toll-free number).

**FILING FOR
NON-RESIDENT OWNERS**

Except for publicly traded partnerships*, a pass-through entity must withhold and pay income tax for all non-resident owners who have not provided Form PTE-TA, *New Mexico Non-resident Owner Income Tax Agreement*. The filing of the PTE return and the payment of withholding tax for the non-resident owner fulfill the non-resident owner's obligation to file an income tax return. A non-resident owner with income from other sources within New Mexico must still file a separate income tax return. See page 16 of the instructions for completing the non-resident owner's tax agreement.

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.

*Beginning with tax year 2005, publicly traded partnerships are exempt from the requirement of withholding tax from each non-resident partner's income.

Please contact the Administrative Resolution and Services Bureau at (505) 827-0825 for details on PTE filing requirements.

**REQUIRED ATTACHMENTS
TO FORM PTE**

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

- **PTE Form:** *New Mexico Income and Information Return for Pass-Through Entities*.
- **PTE-1:** *Income Taxable to Owners*, computing the total of New Mexico taxable income applicable to all owners.
- **PTE-A:** *New Mexico Apportionment Factors*, if the entity has income from sources both inside and outside New Mexico.

- **PTE-B:** *Allocated Non-business Income Taxable to Owners*, if the entity has non-business taxable income.
- **PTE-C:** *Allocated and Apportioned Income Taxed to S Corporations*, if the entity is an S corporation with federal taxable income.
- **PTE-D:** *Owner Information*, disclosing each owner's name, address, whether or not a resident, social security number or FEIN, profit-percentage, total New Mexico taxable income, and withholding tax paid.
- **PTE-CR, if applicable:** *Non-refundable Credit Schedule*, and required attachments.
- Either **federal Form 1120S, page 1 and Schedule K**, or **federal Form 1065, page 1 and Schedule K**.
- **Other attachments** as required by instruction.

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

If your return shows a balance due, complete **Form PTE-PV, Payment Voucher**, to include with your check or money order.

Use **Form 2010 PTE-EXT, Extension Payment Voucher**, if you have obtained a federal automatic extension or a New Mexico extension and a payment towards the tax liability is made to avoid the accrual of interest.

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

A copy of the **approved federal extension or the approved New Mexico**

CORPORATE INCOME TAX RATES

<u>Net Taxable Income</u>	<u>Tax</u>
Not over \$500,000.....	4.8% of net taxable income
Over \$500,000 but not over \$1,000,000.....	\$24,000 plus 6.4% of the excess over \$500,000
Over \$1,000,000.....	\$56,000 plus 7.6% of the excess over \$1,000,000

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 information returns and withholding statements. Attach a copy of all annual information returns and withholding statements showing income and New Mexico income tax withheld, if reporting amounts withheld on lines 13 or 14, Form PTE. Attach Forms W-K 2010, *New Mexico Income and Withholding from Pass-Through Entity*, federal Form 1099-MISC or equivalent, or New Mexico Form RPD-41285, *Annual Statement of Withholding of Oil and Gas Proceeds*.

The beneficiary of a simple trust or a grantor trust may claim tax withheld on behalf of the simple or grantor trust by attaching a copy of **Form WT, Statement of Certain Trust Distributions of Withholding From Oil and Gas Proceeds**. The simple trust or grantor trust may distribute its withholding of oil and gas proceeds to its beneficiaries by reporting the withholding paid to the Department and issuing New Mexico Form WT to the beneficiary. The beneficiary must attach Form WT to its income tax return to claim the tax withheld.

Attach Federal Form(s) 8886, if required - If required to be attached to your federal income tax return, mark the indicator box in Question F on Form PTE and attach a copy of federal Form(s) 8886, *Reportable Transaction Disclosure Statement*. See page 5 of the instructions for Form PTE for details.

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

To claim the renewable energy production tax credit, attach **Form RPD-41227, Renewable Energy Production Tax Credit Claim Form**, and enter the amount claimed on line 16, Form PTE. The credit may be refundable.

See *Available Credits* on page 5 for a description of the **attachments required to claim any non-refundable**

credits reported on Schedule PTE-CR. For more information on business-related credits, also see publication FYI-106, *Claiming Tax Credits for CRS Taxes & Business-Related Income*, download the forms from the TRD website at www.tax.newmexico.gov or call (505) 476-3683.

PAYMENT OF THE PASS-THROUGH ENTITY TAXES

Complete Form PTE-PV, *Income and Information Return for Pass-Through Entities Payment Voucher*, and attach it to your check or money order. Mail the return, payment voucher PTE-PV, payment and required attachments to:

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

Do not cut or resize the bottom portion of the payment voucher in any way. When printing the document from the Internet, the printer setting "Page Scaling" should be set to 'none' to prevent resizing.

Make your check or money order payable to New Mexico Taxation and Revenue Department. Do not mail cash to pay the pass-through entity taxes.

To avoid misapplication of funds write "2010 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.

DUE DATE

For S corporations that file on a calendar-year basis, the 2010 New Mexico *Income and Information Return for Pass-Through Entities* is due on or before March 15, 2011, together with payment of taxes due. For fiscal-year filers, the return is due on the fifteenth day of the third month after the end of the fiscal year.

For partnerships that file on a calendar-year basis, the 2010 New Mexico *Income and Information Return for Pass-Through Entities* is due on or before April 15, 2011. For fiscal-year filers, the return is due on the fifteenth day of the fourth month after the end of the fiscal year.

A New Mexico income tax return and tax payment are timely if the United States Post Office postmark on the envelope bears a date on or before the due date. If the due date falls on a Saturday, Sunday, state or national legal holiday, the return is timely if the postmark bears the date of the next business day. Delivery through a private delivery service is timely if the date recorded or marked by the private delivery service is on or before the due date.

EXTENSION OF TIME TO FILE

The Taxation and Revenue Department accepts an extension of time granted by the Internal Revenue Service if a copy of the automatic or approved federal extension accompanies the PTE return at the time of filing.

If the entity needs an extension of time to file the New Mexico Form PTE 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.

To make an extension payment by mail or delivery, you will need to complete Form PTE-EXT, and submit the payment with this form.

EXTENSION PAYMENT

To make an extension payment by mail or delivery, you will need to complete Form PTE-EXT, *New Mexico Income and Information Return for Pass-Through Entities Extension Payment Voucher*. An extension payment is made when either a federal automatic extension or a New Mexico extension has been obtained, and a payment to-

wards the tax liability is made to avoid the accrual of interest. An extension of time to file your return does not extend the time to pay. If tax is due, interest continues to accrue. If you expect to owe more tax when you file your 2010 return, make a payment using the 2010 PTE-EXT payment voucher and avoid the accrual of interest on that amount.

NOTE: No quarterly estimated payments are required on franchise or withholding taxes due.

PENALTIES AND INTEREST

Interest: Interest accrues on tax that is not paid on or before the due date of your return even if you receive an extension of time to file. *Interest is a charge for the use of money and by law cannot be waived.* Prior to January 1, 2008, interest was calculated at the statutory rate of 15% per year, computed on a daily basis. Beginning January 1, 2008, interest is computed on a daily basis, at the rate established for individual income tax purposes by the U.S. Internal Revenue Code (IRC).

The IRC rate changes quarterly. The IRC rate for each quarter is announced by the Internal Revenue Service in the last month of the previous quarter. The annual rate for the four quarters of the 2010 tax year, was 4% and the daily rate was 0.010958904%. At the time these instructions were sent to the printer, the rate for the first quarter of 2011 had not been announced. The annual and daily interest rates for each quarter will be posted on our website at www.tax.newmexico.gov.

Important: You do not need to figure the amount of penalty or interest due on your return. Once your principal tax liability is paid, penalty and interest stops accruing. The Department will bill you for any penalty or interest due.

If the pass-through entity does not pay its New Mexico pass-through entity income, withholding or franchise tax when due, interest is assessed. **Interest accrues even if the entity obtains an extension of time to file a return.** The formula for calculating interest is:

Tax due x the daily interest rate
for the quarter x number of
days late = interest due.

Negligence Penalty for Late Filing or Late Payment: If a return is not filed or tax remains unpaid when due because of negligence or disregard of rules or regulations, but without intent to defraud, the entity is liable for a penalty of 2% of the tax due for each month, or partial month, from the date the return was due, not to exceed 20% of the amount of tax due. The penalty does not apply if there is an extension of time and the tax is paid by the extended due date. Calculate this penalty by multiplying the tax due by 2% times the number of months (including any partial month as a full month) past the due date or extended due date.

AMENDED RETURNS

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

If additional tax is due, send payment for the full amount, including interest calculated from the date the original return was due and any applicable penalty. Attach Form PTE-PV.

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 90 days of the date the federal adjustments are final. Attach a copy of the RAR.

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

LINE INSTRUCTIONS FOR COMPLETING FORM PTE

Computerized schedule(s) WILL NOT be accepted in lieu of completing the appropriate forms, except that computerized forms will be accepted for Schedule PTE-D if more than eleven owners are reported. All applicable line items on Form PTE and Schedules PTE-1, PTE-A, PTE-B, PTE-C, PTE-D, PTE-CR, and either Federal Form 1120S or Federal Form 1065 and Schedule K must be completed for the return to be processed.

NOTE: References to federal form line numbers correspond to the most recent federal forms as of the date of this printing. If the references do not correspond to the federal form, use the applicable line from the federal form for the item described.

Round all dollar amounts to the nearest whole dollar.

Complete the taxpayer information at the top of Form PTE. Type or print the correct name, address, ZIP code and identification numbers in the spaces provided. Indicate if the return is an original or amended return and if the reporting entity is taxed federally as a partnership or an S corporation by marking the appropriate box.

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

Enter the **NAICS (North America Industrial Classification System) Code.** The business activity code reported for New Mexico filing purposes will be the same as reported for federal purposes. If you don't know your NAICS code, refer to the instructions for federal Forms 1120 and 1120-A. Federal forms and instructions can be downloaded from the IRS website, www.irs.gov.

NOTE: The Department cannot process a return without the Federal Employer Identification Number (FEIN). Failure to provide the FEIN will result in process-

ing delays and may cause the return to be rejected.

If the pass-through entity does not have a New Mexico CRS identification number, an application for a New Mexico CRS identification number, Form ACD-31015, *Application for Business Tax Identification Number*, may accompany the tax return when filed. If the pass-through entity does not require a New Mexico CRS identification number because the entity has no gross receipts, withholding or compensating tax due, the New Mexico CRS identification number may be left blank.

Fiscal-year or short-year filers should enter beginning and ending dates (month and year only). No entry is required for calendar-year filers.

Complete Questions A through E.

Question F. Checkbox Indicating Federal Form(s) 8886 is Required to be Attached

Put an "X" in the box if federal Form(s) 8886, *Reportable Transaction Disclosure Statement*, must be attached to your 2010 New Mexico Form PTE. If federal Form(s) 8886 is required to be attached to your 2010 federal income tax return or information return, then it is also required to be attached to your 2010 New Mexico income tax return or information return. The Internal Revenue Service requires taxpayers to appropriately disclose participation in certain "listed transactions" on tax returns. Listed transactions are those that the IRS has determined to be structured for the significant purpose of tax avoidance or evasion. See the instructions for your 2010 federal income tax return or information return, or federal Form 8886 for details.

LINES 1 THROUGH 4. These lines are to be used only by an S corporation that pays federal income tax on capital gains and passive income. An S corporation with income subject to federal tax must also compute New Mexico income tax on lines 1 through 4.

Calculate tax due on line 2 using the taxable income figure on line 1 and the rate table on page 2 of these instructions.

LINE 4. Multiply line 2 by line 3. However, if you qualify to file Schedule CC, then enter only the amount from line 3 of **Schedule CC** on line 4.

IF THE CORPORATION HAS NO INCOME SUBJECT TO FEDERAL TAX, SKIP LINES 1 THROUGH 4 AND GO TO LINE 5.

LINE 5. Enter the total withholding tax for all non-residents computed on Schedule(s) PTE-D.

Mark the indicator box if your entity is a publically traded partnership, which is exempt from withholding tax.

LINE 6. If any of the non-refundable credits below are claimed, complete Schedule PTE-CR and attach the applicable form(s), statements or other required back-up. Enter the sum of non-refundable credits claimed on line 20, Schedule PTE-CR, on line 6, Form PTE. The supporting documentation required to claim any of the non-refundable credits is described in the next section and must accompany the return, or the claim for the credit will not be allowed.

To calculate the amount that may be claimed for any tax year, refer to the claim form or supporting instructions for the non-refundable credit.

An S corporation with income subject to federal income tax may be eligible for the following non-refundable corporate income tax credits: Corporate-supported Child-Care Credit, Cultural Property Preservation Credit, Business Facility Rehabilitation Credit, Intergovernmental Business Tax Credit, Welfare-to-Work Tax Credit, Rural Job Tax Credit, Technology Jobs "Additional" Tax Credit, Electronic-Card Reading Equipment Tax Credit, Job Mentorship Tax Credit, Land Conservation Incentives Credit, Affordable Housing Tax Credit, Blended Biodiesel Fuel Tax Credit, Sustainable Building Tax Credit, Advanced Energy Tax Credit, Agricultural Water Conservation Tax Credit, and Geothermal Ground-Coupled Heat Pump Tax Credit. **These credits may be claimed against corporate income tax.**

A partnership or S corporation may **claim certain non-refundable credits against the owner's withholding tax reported on Schedule(s) PTE-D:** Rural Job Tax Credit, Technology Jobs "Basic" Tax Credit, Affordable Housing Tax Credit, High-Wage Jobs Tax Credit, Investment Credit, Alternative Energy Product Manufacturers Tax Credit, and the Advanced Energy Tax Credit.

For more information on business-related credits, see also Publication FYI-106, *Claiming Tax Credits for CRS Taxes & Business-Related Income*, download related forms from the TRD website at www.tax.newmexico.gov or call (505) 476-3683 or your local district office.

AVAILABLE CREDITS

Corporate-Supported Child Care Tax Credit. Corporations providing or paying for licensed childcare services for employees' children under 12 years of age may deduct 30% of eligible expenses from their corporate income tax liability for the tax year in which the expenses occur, not to exceed \$30,000. An amount exceeding the tax liability will not be refunded, but may be carried forward for three consecutive years.

To claim this credit against corporate income tax due, complete and attach **Form CIT-3, Corporate Child Care Credit**, to your Form PTE along with **Schedule PTE-CR**. **Enter the amount claimed on line 1 of Schedule PTE-CR.**

Cultural Property Preservation Credit. The credit for preservation of cultural property is 50% of the costs of a project for the restoration, rehabilitation or preservation of cultural property listed on the official New Mexico Register of Cultural Properties, not to exceed \$25,000. Beginning in 2009, if the property is also located in an arts and cultural district certified by the state or a municipality pursuant to the Arts and Cultural District Act, a maximum of \$50,000 credit will be allowed.

The Cultural Properties Review Committee must approve the project plan before the restoration begins and certify

that the completed project conforms to the plan.

To claim this credit against any corporate income tax due, complete **Form CIT-4, New Mexico Preservation of Cultural Property Credit**, and attach it to your Form PTE along with a copy of the Part 2 approval from the New Mexico Cultural Properties Review Committee. **Enter the amount claimed on line 2 of Schedule PTE-CR.**

Business Facility Rehabilitation Credit. Credit is available for some pre-approved costs of restoration, rehabilitation or renovation of a qualified business facility located in a New Mexico enterprise zone. The facility must be suitable for use and put into service in the manufacturing, distribution or service industry immediately following the restoration, rehabilitation or renovation project. This credit is for 50% of the pre-approved costs and it may not exceed \$50,000.

Contact the State Enterprise Zone Program Officer to obtain the Economic Development Department's advance approval and certification for your project.

Once certification is received from the New Mexico Enterprise Zone Program Officer, attach a completed Form CIT-5, *Qualified Business Facility Rehabilitation*, Schedule PTE-CR, and the certificate of completion issued by the New Mexico Enterprise Zone Program Officer to your Form PTE. **Enter the amount claimed on line 3 of Schedule PTE-CR.**

Intergovernmental Business Tax Credit. A corporation engaged in growing, processing or manufacturing may receive a credit for up to 50% of all taxes imposed by an Indian nation, tribe or pueblo located wholly or partly in New Mexico on income from new business activity on Indian land. Exception: A tax eligible for credit under Section 7-29C-1 NMSA 1978, or any other intergovernmental business tax credit that provides a similar credit may not be counted for intergovernmental business tax credit. Such taxes are oil and gas severance tax, oil and gas conservation tax, oil and gas emergency school tax, oil and gas

ad valorem production tax on products severed from Indian tribal land, or a tax imposed on the privilege of severing products from tribal land. The law limits the credit to income from a new business established on tribal land after July 1, 1997. A new business is a manufacturer or processor occupying a new business facility or a grower who begins operations in New Mexico after July 1, 1997.

To claim this credit against any corporate income tax due, attach a **statement establishing entitlement to the credit with proof of payment of tax to an Indian nation, tribe or pueblo** on which the credit is based to your Form PTE along with Schedule PTE-CR. **Enter the amount claimed on line 4 of Schedule PTE-CR.**

Credit for Welfare-to-Work Program. Prior to January 1, 2008, certain businesses located mostly in rural counties that qualified for the federal Welfare-to-Work credit provided by Section 26 U.S.C § 51A, may also have been eligible for the New Mexico Welfare-to-Work credit. Beginning January 1, 2008, Section 26 U.S.C § 51A was repealed and a new federal work opportunity credit was established. Employers who qualify for the new federal work opportunity credit will no longer qualify for the New Mexico Welfare-to-Work credit.

Employers who qualified and were approved for New Mexico Welfare-to-Work credit under the laws existing prior to January 1, 2008 may continue to carry forward any balance on an approved credit for three consecutive tax years after the tax year for which the credit was approved.

To claim the credit against corporate income tax, submit your Form PTE for the year the eligible wages were incurred along with Schedule PTE-CR and a copy of the New Mexico Department of Workforce Solutions certification. **Enter the amount claimed on line 5 of Schedule PTE-CR.**

Rural Job Tax Credit. A Rural Job Tax Credit is available for employers in rural areas of New Mexico who qualify for Job Training Incentive Program assistance. Eligible employers may earn

the rural job tax credit for each qualifying job created after July 1, 2000. The employer must certify the wages paid to each eligible employee. See Form RPD-41247, *Certificate of Eligibility for the Rural Job Tax Credit*, on the TRD website, www.tax.newmexico.gov. Pre-approval is required.

Calculate the Rural Job Tax Credit at 6-1/4% of the first \$16,000 in wages paid for each qualifying job for no more than four qualifying periods in a Tier 1 area, and no more than two qualifying periods in a Tier 2 area. A rural area excludes Albuquerque, Los Ranchos, Corrales, Rio Rancho, Tijeras, Santa Fe and Las Cruces and a ten-mile zone around these municipalities. Tier 2 areas are limited to Roswell, Clovis, Carlsbad, Hobbs, Gallup, Alamogordo and Farmington. Tier 1 is any rural area not part of a Tier 2 area. A qualifying period is 12 months.

The holder of the Rural Job Tax Credit document may apply all or part of the credit against the holder's combined state gross receipts, compensating and withholding taxes, or personal or corporate income tax.

To apply for this credit, complete Form RPD-41238, *Application for Rural Job Tax Credit*, attach a notarized completed Form RPD-41247, *Certificate of Eligibility for the Rural Job Tax Credit*, for each qualified job you claim in the eligible period and send it to the address on the form.

Once approval is received from TRD, complete Form RPD-41243, *Rural Job Tax Credit Claim Form*, and submit it with your Form PTE along with Schedule PTE-CR. **Enter the amount claimed on line 6 of Schedule PTE-CR.**

When you file your tax return, indicate the amount of the credit you wish applied to your liability. Attach a copy of the *Rural Job Tax Credit Claim Form*, RPD-41243.

Technology Jobs (Additional and Basic) Tax Credit. The Technology Jobs Tax Credit is 4% of qualified expenditures for conducting research and development. An additional 4% credit

is available if the taxpayer increases its annual payroll by at least \$75,000 for every \$1 million in qualified expenditures it claims in a tax year. The basic and additional credits double for businesses in rural areas.

The taxpayer must make the eligible expenditures for research and development at a qualified facility. For a list of qualified expenditures, see the instructions for Form RPD-41239, *Application for Technology Jobs Tax Credit*.

The holder of the Technology Jobs Tax Credit document may apply all or part of "basic" credits against the holder's combined state gross receipts, compensating and withholding taxes. If you have earned "additional" credits, you may claim that amount on personal or corporate income taxes. Pre-approval is required.

To apply for the basic and additional credit, complete Form RPD-41239, *Application for Technology Jobs Tax Credit*, and send it along with documentation of the expenditures and payroll increase to the address on the form.

To claim an approved technology jobs tax credit, complete Form RPD-41244, *Technology Jobs Tax Credit Claim Form*, and submit it with your Form PTE and Schedule PTE-CR. **Enter the amount claimed on line 7 of Schedule PTE-CR.**

"Additional" credits may be applied towards corporate income tax due and "Basic" credits may be claimed against any withholding tax due on Form PTE.

NOTE: Taxpayers who claim the research and development small business tax credit are ineligible to claim the investment tax credit or the technology jobs tax credit for the same reporting period.

Electronic Card-Reading Equipment Tax Credit. New Mexico has a one-time income tax credit for businesses that purchase electronic identification card-readers for age verification. A business may claim this credit on a New Mexico personal income tax return or corporate income and franchise tax return if:

- The business is licensed to sell

cigarettes, tobacco products or alcoholic beverages, *and*

- The business has purchased, and is using, equipment that electronically reads identification cards to verify age.

The credit amount is \$300 for each business *location* using electronic identification card-readers. A partnership or other business association of which the taxpayer is a member may claim a credit in proportion to the taxpayer's interest in the partnership or association. The total credit claimed by all members of the partnership or association may not exceed \$300 for each business location.

Claim this non-refundable credit in the tax year the equipment was purchased and put into use. You cannot carry excess amounts forward or back into another tax year.

To claim the credit, complete and notarize Form RPD-41246, *Income Tax Credit for Electronic Identification Card Reader, Purchase and Use Statement*. Submit the statement and Schedule PTE-CR with your Form PTE. When the credit (\$300) is split among spouses, owners, partners, or other business associations, each claimant must show the division of the total credit (\$300 per business location) on page 2 of Form RPD-41246. **Enter the amount claimed on line 8 of Schedule PTE-CR.**

Job Mentorship Tax Credit. A taxpayer owning a New Mexico business may claim a Job Mentorship Tax Credit for employing qualified students who take part in a career preparation education program. The credit equals 50% of gross wages paid to a maximum of ten qualified students. The business must employ the students for up to 320 hours each during the tax year. A taxpayer may not claim a credit for one qualified individual for more than three tax years. The maximum credit for one tax year is \$12,000.

Obtain a Form RPD-41280, *Job Mentorship Tax Credit Certificate*, from the secondary school operating the career preparation education program for each qualified student you employ.

To claim this credit against corporate income tax, complete Form RPD-41281, *Job Mentorship Tax Credit Claim Form*, and attach it to your Form PTE with Schedule PTE-CR. **Enter the credit claimed on line 9 of Schedule PTE-CR.** Also attach a *Job Mentorship Tax Credit Certificate* for each qualified student employed during the tax year. You may carry unused credit forward for three consecutive years.

A partnership or other business association of which the taxpayer is a member may claim a credit in proportion to the taxpayer's interest in the partnership or association.

Land Conservation Incentives Credit. Corporations who donate land, or interest in land, to private or public conservation agencies for conservation purposes may claim a credit from personal or corporate income tax, equal to 50% of the fair market value of the land transferred up to \$100,000 for donations made prior to January 1, 2008, and \$250,000 for donations made after January 1, 2008. Additionally for a donation made after January 1, 2008, the credit may be sold, exchanged or transferred in increments of \$10,000 or more. Only one credit may be claimed in a tax year.

To apply for this credit contact the Energy, Minerals and Natural Resources Department (EMNRD) who certifies the eligibility of the donation.

Once the certificate of eligibility is received from EMNRD, complete Form RPD-41335, *Land Conservation Incentives Tax Credit Application*, and submit to TRD with a copy of the certificate of eligibility.

Once approval is received from TRD, claim this credit against any corporate income tax due, by completing and attaching **RPD-41282, *Land Conservation Incentives Credit Claim Form***, to your Form PTE with Schedule PTE-CR. **Enter the amount claimed on line 10 of Schedule PTE-CR.** Also, attach the letter received from EMNRD certifying treatment as a qualified donation. Unused credit may be carried forward for up to 20 consecutive years following the year in which the qualified donation

occurred.

Affordable Housing Tax Credit.

Beginning January 1, 2006, the Mortgage Finance Authority (MFA) issues vouchers to persons who have invested in affordable housing projects. The vouchers, good for up to 50% of the investment, may be sold or transferred, provided the MFA is notified of the transfer and a voucher has been re-issued to the transferee. "Affordable housing" covers land acquisition, construction, building acquisition, remodeling, improvement, rehabilitation, conversion or weatherization for single-family residences approved by MFA and multi-family residential housing located in a county of fewer than 100,000 persons.

To apply for the credit, contact the Mortgage Finance Authority for approval of the project and issuance of the vouchers.

After receiving the vouchers from MFA, the taxpayer may apply them as a credit against gross receipts, compensating, withholding, personal income or corporate income tax liabilities and carry unused credits forward for five years.

To claim the credit, complete and attach Form **RPD-41301**, *Affordable Housing Tax Credit Claim Form*, to your Form PTE along with Schedule PTE-CR. **Enter the amount claimed on line 11 of Schedule PTE-CR.**

High-Wage Jobs Tax Credit. Employers who create high-wage jobs in New Mexico and are eligible for in-plant training assistance may qualify.

To apply for this credit, complete Form RPD-41288, *Application for High-Wage Jobs Tax Credit*. You must also attach a notarized Form RPD-41289, *Certificate of Eligibility for the High-Wage Jobs Tax Credit*, for each eligible employee employed in a qualified job during a qualified period you claim on the application. Submit all documentation to TRD for approval.

Once approval is received from TRD, claim this credit against any withholding tax due, by completing and attaching **RPD-41290**, *High-Wage Jobs Tax Credit Claim Form*, to Form PTE and

Schedule PTE-CR. **Enter the amount claimed on line 12 of Schedule PTE-CR.**

Investment Tax Credit. Credit is available for equipment owned and introduced into New Mexico for use by a taxpayer in a new or expanded manufacturing operation. Pre-approval is required. Manufacturing excludes construction, farming, most power generation and the processing of natural resources and hydrocarbons.

To apply for this credit, submit to TRD a completed Form RPD-41167, *Application for New Mexico Investment Credit*, and Form RPD-41168, *Application for New Mexico Investment Credit - Schedule A*, within a year of the end of the calendar year in which the qualified equipment is first purchased and introduced into New Mexico.

Once approval is received from TRD, claim this credit against any withholding tax due, by completing and attaching Form **RPD-41212**, *Investment Credit Claim Form*, to your Form PTE with Schedule PTE-CR. **Enter the amount claimed on line 13 of Schedule PTE-CR.**

Blended Biodiesel Fuel Tax Credit. Beginning January 1, 2007 but not after December 31, 2012, a rack operator or supplier who is required to pay the special fuel excise tax and who files a New Mexico personal or corporate income tax return may claim a credit against the tax due on the return for each gallon of blended biodiesel fuel on which that person paid, or would have paid, the special fuel excise tax in the tax year, but for certain deductions allowed for special fuel sold or the treaty exemption for North Atlantic Treaty Organization use.

To qualify for the credit, a taxpayer must be a registered New Mexico supplier who files Form RPD-41306, *Combined Fuel Tax Report*, reporting qualifying biodiesel fuel receipts.

To apply for the credit complete Form RPD-41322, *Blended Biodiesel Fuel Tax Credit Application*, to report qualifying biodiesel fuel receipts and establish eligibility for the credit, and

submit to TRD.

Once approval is granted for eligibility, to claim the credit, complete Form RPD-41340, *Blended Biodiesel Fuel Tax Credit Claim Form*, and attach it to your Form PTE with Schedule PTE-CR. **Enter the credit claimed on Schedule PTE-CR, line 14.**

Sustainable Building Tax Credit. A credit is available for the construction in New Mexico of a sustainable building or for the renovation of an existing building in New Mexico into a sustainable building or the permanent installation of manufactured housing, regardless of where the housing is manufactured, that is a sustainable building after January 1, 2007. The building may be for residential or commercial use, but is not available for a building owned by an entity that does not file a New Mexico corporate or personal income tax return. The credit is available for residential and commercial buildings, after the construction, installation or renovation of the sustainable building is complete. To qualify for the tax credit, the building must have achieved a silver or higher certification level in the LEED green building rating system or the build green New Mexico rating system.

Effective June 19, 2009, owners of qualified multifamily residential buildings may apply for a portion of the sustainable building tax credits allocated for sustainable commercial buildings. Tax credit allocated for sustainable commercial buildings can be used for multifamily residential buildings when the entire amount of the \$5 million in sustainable building tax credits available for residential buildings has been allocated, and if any portion of the \$5 million in sustainable building tax credits available for commercial buildings remains.

To apply for this credit, you must first obtain a certificate of eligibility by contacting the Energy, Minerals and Natural Resources Department.

Once the certificate of eligibility is issued, you must promptly complete and submit Form RPD-41327, *Sustainable Building Tax Credit Approval*, along with a copy of the certificate of eligibility,

to the Taxation and Revenue Department before claiming the credit on your New Mexico income tax return.

To claim this credit against any corporate or personal income tax due, complete and attach **RPD-41329, Sustainable Building Tax Credit Claim Form**, to Form PTE with PTE-CR. **Enter the amount claimed on line 15 of Schedule PTE-CR.**

Alternative Energy Product Manufacturers Tax Credit. Manufacturers of certain alternative energy products may qualify. An alternative energy product means an alternative energy vehicle, fuel cell system, renewable energy system or any component of an alternative energy vehicle, fuel cell system or renewable energy system or components for integrated gasification combined cycle coal facilities and equipment related to the sequestration of carbon from integrated gasification combined cycle plants.

To apply for this credit, submit a completed Form RPD-41330, *Application for Alternative Energy Product Manufacturers Tax Credit*, and Schedule A to TRD.

Once the approval has been received from TRD, to claim this credit against withholding tax due, complete and attach Form **RPD-41331, Alternative Energy Product Manufacturers Tax Credit Claim Form**, to your Form PTE with Schedule PTE-CR. **Enter the amount claimed on line 16 of Schedule PTE-CR.**

Advanced Energy Tax Credit. A qualified electricity generating facility located in New Mexico may be eligible to apply for and claim the advanced energy tax credit (advanced energy income tax credit, advanced energy corporate income tax credit and the advanced energy combined reporting tax credit). The amount of the credit is 6% of the eligible generation plant costs. The aggregate amount of tax credit that may be claimed with respect to a qualified generating facility is limited to \$60,000,000.

The electric generating facility and the claimant must apply for a certificate of

eligibility from the New Mexico Environment Department.

To obtain approval, submit a completed Form RPD-41333, *Advanced Energy Tax Credit Application*, a certificate of eligibility and other information TRD requires to determine the amount of tax credit allowed. The application must be submitted within one year following the end of the calendar year in which the eligible generation plant costs are incurred. The right to claim the credit may be allocated to other taxpayers who are interest owners in the qualified generating facility. The *Notice of Allocation of Right to Claim Advanced Energy Tax Credits* is required to be attached to Form RPD-41333 to allocate the credit to interest owners.

Once approved, you may claim this credit against corporate income or withholding tax by completing Form RPD-41334, *Advanced Energy Tax Credit Claim Form*, and attach it to your Form PTE with Schedule PTE-CR and a copy of the certificate of eligibility. **Enter the amount claimed on line 17 of Schedule PTE-CR.**

Agricultural Water Conservation Tax Credit. A taxpayer may claim a credit against the taxpayer's personal or corporate tax liability for expenses incurred by the taxpayer for eligible improvements in irrigation systems or water management methods. Eligible improvements means an improvement that is:

- made on or after January 1, 2008;
- consistent and complies with a water conservation plan approved by the local soil and water conservation district in which the improvement is located; and
- primarily designed to substantially conserve water on land in New Mexico that is owned or leased by the taxpayer and used by the taxpayer or the taxpayer's lessee to produce agricultural products, harvest or grow trees, or sustain livestock.

The amount of the credit is 35% of eligible expenses incurred in calendar year 2008 and 50% of eligible expenses incurred in subsequent years through December 31, 2012. The total

credit allowed in a tax year may not exceed \$10,000.

To claim the agricultural water conservation tax credit, you must first obtain a certificate of eligibility from the local Soil and Water Conservation Commission within the district which encompasses the land upon which the improvement is or will be located. To find your local Soil and Water Conservation Commission District, visit www.nmda.nmsu.edu/natural-resources/soil-and-water-conservation-program or call (575) 646-2642.

To claim the credit against any corporate income tax due, complete **Form RPD-41319, Agricultural Water Conservation Tax Credit Claim Form**, and attach it to your Form PTE with Schedule PTE-CR. **Enter the amount claimed on line 18 of Schedule PTE-CR.**

NOTE: The agricultural water conservation tax credit provisions are repealed effective January 1, 2013.

Geothermal Ground-Coupled Heat Pump Tax Credit. A credit is available for a taxpayers who have purchased and installed a geothermal ground-coupled heat pump in a residence, business or agricultural enterprise in New Mexico owned by that taxpayer or owned by a partnership or other business association of which the taxpayer is a member.

To qualify for this credit, you must first obtain a certificate of eligibility from the New Mexico Energy, Minerals and Natural Resources Department.

To claim this credit against any corporate, personal, or fiduciary income tax due, complete and attach **RPD-41346, Geothermal Ground-Coupled Heat Pump Tax Credit Claim Form**, to Form PTE with PTE-CR. **Enter the amount claimed on line 19 of Schedule PTE-CR.**

LINE 8. Every domestic or foreign entity, inclusive of any qualifying S subsidiary, taxed as a corporation must pay the \$50 franchise tax if it:

- transacts business in, into or from New Mexico;

- derives income from any property or employment within this state; or
- has or exercises its corporate franchise in New Mexico, whether engaged in active business or not.

Corporations electing to be treated as S corporations are not exempt from franchise tax.

The \$50 franchise tax is due for each tax year, including short years. The franchise tax may not be prorated based on a short-year return.

Taxpayers who have no nexus in New Mexico pursuant to P.L. 86-272, are not immune from paying New Mexico Franchise Tax.

REMINDER: It is your responsibility to comply with all additional filing requirements imposed by the New Mexico Public Regulation Commission. For information call (505) 827-4508 or visit their website at www.nmprc.state.nm.us.

LINE 12. Enter the total amount of all extension payments and amounts applied from the prior year's return. Check the appropriate box(es) indicating the source of the payment(s).

LINE 13. Enter total New Mexico income tax withheld from all annual information returns, other than tax withheld from oil and gas proceeds. Attach a copy of all annual information returns showing New Mexico income tax withheld, including Forms W-K 2010, *New Mexico Income and Withholding from a Pass-Through Entity*, and federal Forms 1099.

LINE 14. Enter the total of all New Mexico income tax withheld from oil and gas proceeds as shown on your annual withholding statements, 1099-MISC, or RPD-41285, *Annual Statement of Withholding of Oil and Gas Proceeds*. Also include tax withheld and reported on New Mexico Form WT, *Statement of Certain Trust Distributions of Withholding From Oil and Gas Proceeds*. Be sure to include a copy of the forms with your PTE return.

IMPORTANT: To receive proper credit for withholding, all annual statements

must be issued to the entity filing the New Mexico income tax return.

With the exception of simple and grantor trusts, an entity filing a New Mexico Form PIT-1, CIT-1, PTE or FID-1, that has had tax withheld on oil and gas proceeds may not pass the withholding statement directly to its owners, members, partners or beneficiaries. The entity must file and report the tax withheld on oil and gas proceeds on its New Mexico income tax return.

Only a simple trust or grantor trust may distribute its withholding of oil and gas proceeds to its beneficiaries. To distribute the withholding to its beneficiaries, the simple or grantor trust must first report the withholding paid to the Department, and then issue New Mexico Form WT, *Statement of Certain Trust Distributions of Withholding from Oil and Gas Proceeds*, to its beneficiaries. To report the withholding tax to be passed on, attach Schedule FID-WD, *Withholding Tax Distributions for Simple and Grantor Trusts*, to Form FID-1. If you are a grantor trust not required to file Form FID-1, simply submit a completed Schedule FID-WD and the Grantor Trust letter listing the trust FEIN and grantor social security number. Also attach a copy of the annual statement of withholding issued to the trust. NOTE: If a grantor trust has become irrevocable upon the grantor's death, it must file Form FID-1.

Once Schedule FID-WD is filed with the Department and Form WT is received, the beneficiary of a simple trust or a grantor trust may claim tax withheld on behalf of the simple or grantor trust simply by reporting it on his or her New Mexico income tax return and attaching a copy of Form WT, showing the withholding passed to the beneficiary.

LINE 15: Enter the amount of the approved film production tax credit on line 15. Attach a copy of the credit approval from the Taxation and Revenue Department.

The film production tax credit provides a credit for an eligible film production company. The amount of the credit is equal to 25% of direct production and

direct postproduction expenditures. Direct production expenditures must be directly attributable to the production in New Mexico of a film or commercial audiovisual and both direct and postproduction expenditures must be subject to taxation by the State of New Mexico. To obtain approval for the credit, first apply to the New Mexico Film Office of the Economic Development Department (EDD).

When approval is received from EDD, the film production company may apply for Taxation and Revenue Department approval of the credit. See the *Application for Film Production Tax Credit*, Form RPD-41229 for details.

LINE 16. Enter the amount of the approved renewable energy production tax credit on line 16. Corporate income taxpayers may receive a renewable energy production tax credit for producing electricity by solar light or heat, wind or biomass power at a penny per kilowatt hour up to the first 400,000 megawatt hours of electricity produced yearly per taxpayer for 10 years. For a qualified energy generator using a solar-light-derived or solar-heat-derived qualified energy source, the credit is a variable rate for each year beginning with \$.015 per kilowatt hour in the first year in which the qualified energy generator produces electricity, increasing in increments of 1/2 cent each of the next five years, to a maximum of four cents, and then will decline by 1/2 cent per year in the next four years to two cents in the tenth year of operation. Unused credits may be carried forward, or if the qualified energy generator first produced electricity on or after October 1, 2007, may be refunded.

To qualify, the taxpayer must either hold title to a qualified energy generator that first produced electricity on or before January 1, 2018, or lease property upon which a qualified energy generator operates from a county or municipality, under the authority of an industrial revenue bond, and if the qualified energy generator first produced electricity on or before January 1, 2018. The Energy, Minerals and Natural Resources Department (EMNRD) must first approve the business as eligible.

When approval is received from EMNRD, you may claim the credit by attaching to your PTE return, a completed Form RPD-41227, *Renewable Energy Production Tax Credit Claim Form*, the certificate of eligibility issued by EMNRD, the Allocation Notice approved by EMNRD if applicable, and documentation of the amount of electricity produced by the facility in the tax year.

LINE 17. Enter the sum of lines 12 through 16 to compute total payments, tax withheld and credits.

LINE 18. If line 17 is greater than line 11, enter the difference on line 18. All or part of an overpayment on an original return may be applied to the 2011 liability. Indicate the amount of overpayment you want applied to 2011 on line 18a, and the amount of overpayment you wish to be refunded on line 18b.

LINE 20. Add penalty if you file late and owe tax or you do not pay the tax on or before the date the return is due. Calculate penalty by multiplying the unpaid amount on line 19, Form PTE, by 2% then by the number of months or partial months for which the payment is late, not to exceed 20% of the tax due. You may leave this line blank if you wish the Department to compute the penalty for you. The Department will send you a bill.

LINE 21. Add interest if the amount of tax due on line 19 was not paid by the original due date, **even if an extension of time to file was obtained.** You may leave this line blank if you wish the Department to compute the interest for you. The Department will bill you for any interest due.

Important: Once your principal tax liability is paid, penalty and interest stops accruing.

Beginning January 1, 2008, interest is computed on a daily basis, at the rate established for individual income tax purposes by the U.S. Internal Revenue Code (IRC). The IRC rate changes quarterly. The IRC rate for each quarter is announced by the Internal Revenue Service in the last month of the previous quarter. The annual and daily interest rate for each quarter will

be posted on our website at www.tax.newmexico.gov.

The formula for calculating daily interest is:

$$\text{Tax due} \times \text{the daily interest rate for the quarter} \times \text{number of days late} = \text{interest due.}$$

Refund Express

If you request an amount to be refunded to you on line 18b, you may wish to have your tax refund deposited directly into your bank account through Refund Express. To choose Refund Express, complete the "Refund Express" portion of Form PTE. All fields are required. Complete the bank routing number, the account number, and you *must* mark the appropriate box to indicate the type of account. Failure to complete all fields will cause your Refund Express request to be denied, and the Department will mail you a paper check.

Important Changes Affecting Refund Express - Direct Deposit

A direct deposit of your refund, "Refund Express", may not be made to a bank account located at a financial institution outside the territorial jurisdiction of the United States. In order to comply with new federal banking rules, anyone wishing to have their refund directly deposited into their account must answer an additional question when completing the Refund Express portion of their return. If you do not answer the question, your refund will be mailed to you in the form of a paper check. If you answer the question incorrectly, your refund may be delayed, rejected or frozen by the National Automated Clearing House Association (NACHA) or the Office of Foreign Assets Control (OFAC). The question asks whether the refund will go to or through an account located outside the United States. The question also warns you that if the answer is "yes", you should not choose the Refund Express method of delivering your refund. Your options are to use a different bank account or to leave the Refund Express portion of your return blank and a paper check will be mailed to the address on the return.

A financial institution is located within

the territorial jurisdiction of the United States if it is:

- located within the United States;
- located on a United States military base; or
- located in American Samoa, Guam, the Northern Mariana Islands, Puerto Rico or the U.S. Virgin Islands.

The Department will mail you a paper check if your bank does not accept your Refund Express information.

Refund express is available for deposits to the taxpayer's account *only*. **Taxpayers may not request the funds to be deposited into the account of another payee.**

TRD is not responsible for the misapplication of a direct deposit refund that is caused by the error, negligence or malfeasance on the part of the taxpayer. Verify that you enter the correct bank information.

Why Use Refund Express?

- Avoid delays that may occur in mailing a check. Refund Express does not guarantee that you will receive your refund check earlier, however - only that when the check is issued, it will reach the bank more quickly.
- Payment is more secure. There is no check to get lost.
- More convenient. No trip to the bank to deposit your check.
- Saves tax dollars. A refund by direct deposit costs less than a check.

What is the Routing Number?

The routing number is for bank identification and **must be nine digits**. If the first two digits are not 01 through 12 or 21 through 32, the system will reject the direct deposit and you will receive a check. On the sample check below, the routing number is 211500151.

Your check may state that it is payable through a bank different from the financial institution where you have your checking account. If so, do not use the routing number on that check. Instead, contact your financial institution for the correct routing number to enter on this line.

Entering Your Account Number

Your account number can be up to 17 characters. Include hyphens, but omit spaces and special symbols. Enter the number from left to right. Leave unused boxes blank. On the sample check below, the account number is 2015551517. **Do not** include the check number.

You *must* indicate the **type of account**. Enter an "X" in the "checking" box if the account is a checking account or in the "savings" box if the account is a savings account. This field is required.

Caution: Verify that the information you enter is correct and that your financial institution will accept a direct deposit made payable to the name on the PTE return. **NOTE:** Taxation and Revenue is not responsible if a financial institution refuses a direct deposit.

You must answer whether the funds for this payment will go to or through an account located outside the territorial jurisdiction of the United States. The required response is "No". New federal banking rules require that you answer this question. A refund sent to an account located at a financial institution outside the territorial jurisdiction of the United States, even if the payment passes through a U.S. financial institution, may not be made using this refund option. You may select a different bank account or you may leave the *Refund Express* portion of your return blank and a paper check will be mailed to you.

A financial institution is located within the territorial jurisdiction of the United States if it is:

- located within the United States;

- located on a United States military base; or
- located in American Samoa, Guam, the Northern Mariana Islands, Puerto Rico or the U.S. Virgin Islands.

See *Important Changes Affecting Refund Express - Direct Deposit* on page 11.

Collection of Debts from Your Refund

The Department will keep all or part of your overpayment if you owe other taxes to the Department. We will apply that amount to the liability and notify you.

The law also requires the Department to transfer all or part of your overpayment if you owe amounts due under the Unemployment Compensation Law or the Workers' Compensation Administration Act. Any amount over your liability and debt will be refunded.

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

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

enter the preparer's social security number (SSN) or Preparer's Taxpayer Identification Number (PTIN).

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

**SCHEDULE PTE-1
LINE INSTRUCTIONS**

LINES 1 - 12. INCOME TAXABLE TO OWNERS

LINE 1. Enter the ordinary income or loss as recognized from federal tax return Form 1065, Schedule K, or Form 1120S, Schedule K.

NOTE: If you had no nexus in New Mexico or all of your New Mexico activities were immune from either corporate income or withholding tax under P.L. 86-272 for the 2010 tax year, enter zero on this line and write "nexus" on the dotted line next to the space provided for the total amount due on Form PTE, line 19. You must also complete and attach Schedule PTE-A.

LINE 2. Except for guaranteed payments to partners and health insurance payments made on behalf of the partners or partners' dependents, enter the summation of all other income or losses recognized on federal tax return Form 1065, Schedule K, or Form 1120S, Schedule K.

LINE 3. Enter interest income from non-New Mexico state and local bonds not subject to federal income tax under IRC Section 103.

LINE 5. Interest from U.S. government obligations. Interest or dividend income from U.S. government obligations is deductible from the corporation's taxable income only if, and to the extent that, it was included in taxable income on line 1. 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.

The image shows a sample check form with the following details:

- Partnership's Name:** 123 Main Street, Anyplace, NM 87000
- Pay to the order of:** \$ [] DOLLARS
- Routing Number:** 211500151 (circled and labeled "Routing Number")
- Account Number:** 2015551517 (circled and labeled "Account Number")
- For:** A 211500151 A 2015551517 C 1540
- Check Number:** 1540 (top right)
- Bank Name:** ANYPLACE BANK, Anyplace, NM 87000
- Watermark:** "SAMPLE" written diagonally across the center.
- Instruction:** "Do not include the check number" in a box.

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. Except for health insurance payments made on behalf of the partners or partners' dependents, enter the allowable deductions recognized on the federal tax return Form 1065, Schedule K, or Form 1120S, Schedule K. Neither net operating loss carryover nor oil and gas depletion deductions are allowed to be claimed at the entity level on the PTE return.

LINE 7. Enter total allocated income from PTE-B, column 1, line 8, if applicable.

LINE 9. Enter the **Average New Mexico Percentage** from PTE-A, line 5.

LINE 11. Enter New Mexico allocated income from PTE-B, column 2, line 9, if applicable.

SCHEDULE PTE-A LINE INSTRUCTIONS

LINES 1 - 5. APPORTIONMENT OF INCOME

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.

Calculate each percentage to four decimal places (example, 22.4653%).

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

PTE-1, 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. For sales factor only, if you have either a federal taxable income or loss, you must have a positive number in the denominator (Column 1, Gross Receipts line) of the sales factor.

“Apportionable income” means income arising from transactions and activities in the regular course of an entity’s trade or business. Apportionable income includes income from both tangible and intangible property if the acquisition, management or disposition of the property constitutes integral parts of the entity’s regular trade or business. It includes investment income related to or used in the entity’s overall business operations. The following sources of income are considered apportionable income and must be included:

- Dividend income from the investment of working capital or dividend income from an investment which is functionally connected to the entity's trade or business.
- Interest income from the investment of working capital, or interest income from capital investments used in the overall business operations, or interest income from an investment which is functionally connected to the entity's trade or business.
- Royalty income and fees from patents, copyrights, franchises, trademarks and licenses developed in the regular course of the entity's trade or business, or royalty income and fees from a product or mineral

interest used in the regular course of the entity's trade or business.

- Rental or sub-rental income from property purchased, leased or used in the regular course of the entity's trade or business.
- Gains or losses from the sale of assets used in the regular course of the entity's trade or business or assets sold which had been treated as business assets in prior years.
- Income from a partnership or non-corporate entity if held within the regular course of the corporation's trade or business.

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

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

By: The average value of all real and tangible personal property owned or rented everywhere and used during the tax year to produce apportionable income (column 1). If the percentage is negative, enter zero.

Property shall be valued according to the following rules:

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

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

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

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

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

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

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

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

"Compensation" means wages, salaries, commissions, and any other form of remuneration paid to employees for personal services. Only amounts paid directly to employees are included in the payroll factor. "Employees" include leased employees where the taxpayer is considered an employer for payroll tax purposes, but "employees" are not independent contractors to whom the taxpayer issues federal Form 1099.

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

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

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

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

By: The total gross receipts everywhere during the tax year, excluding returns, allowances and allocated

income (column 1). If the percentage is negative, enter zero.

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

Sales of tangible personal property are New Mexico sales if:

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

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

- A. the income-producing activity was performed in New Mexico, or
- B. the income-producing activity was performed both inside and outside New Mexico, but a greater proportion was performed within New Mexico than in any other single state (the proportion shall be determined by the cost of performance in each state),
- C. the gross receipts were from the rental, lease, licensing or any other use of either real or tangible personal property during the time the property was in New Mexico, or
- D. the gross receipts were from the performance of personal services in New Mexico.

LINES 4, 4a and 5. Total Factors. New Mexico uses an evenly weighted three-factor formula for all taxpayers except manufacturers. Taxpayers whose principal activity is manufacturing may use a four-factor formula (sales x 2, plus property, plus payroll) for tax years beginning on or after January 1, 1995 and before January 1, 2020. Once elected, the manufacturer must continue to use the four-factor method for a total of three consecutive tax years covering

at least 36 calendar months.

"Manufacturing" means for the purposes of electing the four-factor apportionment method, combining or processing components or materials to increase their value for sale in the ordinary course of business. Manufacturing does not include construction, farming, processing natural resources and most power generation. A taxpayer may not use this option unless: (a) its tax liability is greater than it would have been for the previous year if the same apportionment method was used, or (b) the taxpayer has increased its combined property and payroll factor percentages in the state over its 1991 levels.

The election to use the four-factor method must be made in writing no later than the filing date of the first return to which the election will apply. Statutory authority for this elective method is in Section 7-4-10(B) NMSA 1978.

Qualified manufacturers electing the four-factor method should complete the statements on line 4a and make the following adjustments when calculating the New Mexico apportionment percentage on the Schedule PTE-A:

- LINE 3, Sales Factor. Divide column 2 by column 1 and multiply the result by 200, not 100.
- LINE 5, Average Percent. Divide the total factors on line 4 by 4.

Elimination of Factor(s)

If the allocation and apportionment provisions of the Uniform Division of Income for Tax Purposes Act do not fairly represent the extent of the taxpayer's business activity in this state, the taxpayer may without prior approval or the department may require - if reasonable - the exclusion of any one or more of the factors (property, payroll or sales). This would include removal of one or more of the factors whose factor is insignificant. A factor is insignificant if the denominator (column 1) is from between 0% and 3% of net income. Use the number of significant factors included to compute the average. If you include an insignificant factor, attach an explanation.

**SCHEDULE PTE-B
LINE INSTRUCTIONS**

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

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

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

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

LINE 1. Allocated 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. Allocated 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. Allocated 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. Allocated Net Profit or Loss on the Sale or Exchange of Non-business Assets. Column 2: The net gain or loss from the sale or exchange of the following should be allocated to New Mexico if it is non-business income:

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

LINE 6. Allocated Non-business Partnership Income. 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 Allocated Non-business Income. Attach a schedule to identify all other allocated income.

**SCHEDULE PTE-C
LINE INSTRUCTIONS**

LINES 1 - 5. ALLOCATED AND AP-PORTIONED INCOME TAXED TO S

CORPORATIONS

S corporations with federal taxable income must complete Schedule PTE-C. S corporations without federal taxable income should not complete this schedule.

LINE 1A. Enter net capital gains from federal Form 1120S, Schedule D, in column 1. Enter net capital gains allocated to New Mexico in column 2.

Gains and losses from sales and exchanges of real property in New Mexico are allocated to New Mexico.

Gains and losses from sales and exchanges of tangible personal property are allocated to New Mexico if:

1. the property was in New Mexico at the time of sale, or
2. the taxpayer's commercial domicile is in New Mexico and the taxpayer is not taxable in the state in which the property was located.

Gains and losses from the sale of intangible property shall be allocated to New Mexico if the taxpayer's commercial domicile is in New Mexico.

LINE 2. Enter excess net passive income from the worksheet for line 22a in the instructions for federal Form 1120S in column 1. Enter excess net passive income allocated to New Mexico in column 2.

LINE 3. Enter net recognized built-in gain from federal Form 1120S, Schedule D, in column 1. Enter net recognized built-in gain allocated to New Mexico in column 2.

LINE 5. Divide the amount on line 4, column 2, by the amount on line 4, column 1 and multiply by 100. Carry the percentage to four decimal places and round to four decimal places (example, 22.4653%). Enter the percentage on line 5 of PTE-C and on line 3 of the PTE.

PTE-D LINE INSTRUCTIONS

COLUMNS 1 - 7. OWNER INFORMATION

Resident Owners Only: For an entity

where 100% of its business activity is conducted in New Mexico, and all owners, members, or partners are New Mexico residents, you may enter "100% New Mexico" on any line and attach copies of Federal K-1 Schedules for each resident owner rather than completing PTE-D. All others must complete Schedule PTE-D.

COLUMN 3. Owner's Percentage. Enter income percentage as disclosed on the owner's federal tax return Form 1065, Schedule K-1, or ownership percentage from federal tax return Form 1120S, Schedule K-1.

COLUMN 4. Owner's Taxable Income. Enter owner's taxable income amount by multiplying column 3 by PTE-D, line 1, for each owner. If Form PTE-D, line 1 is a loss, enter zero for each owner. If an owner has special allocation (for example, guaranteed payments), combine with amount computed from Form PTE-D, line 1.

COLUMN 5. Resident. Mark the checkbox if an owner is a resident of New Mexico. A resident is an individual who is domiciled in this state. An owner that is an entity is a resident if the entity was organized under the laws of New Mexico.

COLUMN 6. Withholding Taxes. Required for non-resident owners for whom a tax agreement (Form PTE-TA) is not held by the entity. If column 5 "resident" box is checked, enter zero for each owner. If column 4 shows taxable income, and the entity holds no tax agreement, compute withholding tax by multiplying 4.9%* by the amount in column 4 for each non-resident owner and enter the total taxes withheld on line 5 of Form PTE.

**The rate of withholding by pass-through entities required to withhold from non-resident owners is equal to the maximum bracket rate set by Section 7-2-7 NMSA 1978 of the Personal Income Tax Act.*

COLUMN 7. Hold Owner's Tax Agreement (Form PTE-TA). If the entity holds a tax agreement executed by the owner, mark the "Yes" checkbox; no withholding tax is required for that

owner. **Retain the New Mexico Non-resident Owner Income Tax Agreement, PTE-TA, in your records. Do not submit with the return.**

NEW MEXICO NON-RESIDENT OWNER TAX AGREEMENT (FORM PTE-TA)

Each non-resident owner may elect to file a New Mexico income tax return and make timely payments of all taxes imposed by the State of New Mexico with respect to its share of the New Mexico income of the entity. An individual is a non-resident if the individual is not a resident of this state. An owner entity is a non-resident owner if the owner entity was organized under the laws of another state. In the absence of actual knowledge, the pass-through entity may rely on the mailing address of the owner to determine residence. The non-resident owner must complete and sign a non-resident owner tax agreement (Form PTE-TA) if the owner elects to file its own income tax return. PTE-TA forms may be obtained from the New Mexico Taxation and Revenue Department. A copy of Form PTE-TA must also be kept on file with the pass-through entity.

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.

The pass-through entity shall provide to each of its owners sufficient information to enable the owner to comply with the provisions of the Income Tax Act and the Corporate Income and Franchise Tax Act with respect to the owner's share of net income.

CONSISTENCY IN REPORTING

An entity is required to be consistent in:

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

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

PETITION PROCEDURE OPEN TO TAXPAYER

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

AFTER YOU FILE YOUR RETURN

If your return shows an overpayment and you have requested that all or a portion of the overpayment be refunded to you, please allow at least 12 weeks for processing before contacting the Department. Processing time will vary according to when you file your return. Occasional computation errors in a tax return will delay processing or result in adjustments to your refund or the amount you owe. If you disagree with any adjustment made by the Department, you should follow the procedures in publication FYI-400, *Tax Audits and Protest Procedures - Your Rights as a Taxpayer*.

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 descrip-

tion of your rights as a taxpayer. Our publication FYI-400, *Tax Audits and Protest Procedures - Your Rights as a Taxpayer*, describes in detail how to dispute an adjustment or assessment made by the Department through either

the claim for refund procedure or the protest procedure. Publication FYI-400 is available by contacting your local district tax office or by downloading from the Department website at www.tax.newmexico.gov. Click on "Forms and Publications".

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

New Mexico Taxpayer Bill of Rights

Most tax transactions happen without incident. In an imperfect world, however, occasional disagreements occur through misunderstanding, mathematical error, missed deadlines, misplaced papers, high volume of transactions and many other situations. Over the years the Legislature and the Department have established ways to handle difficulties according to the provisions of the state tax code. Following are some of your rights. Should you wish to consult the law itself, you will find it in Sections 7-1-4.1 through 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 us according to provisions of Section 7-1-24 NMSA 1978;
- The right to have audits, inspections of records and meetings conducted at a reasonable time and place according to Sec. 7-1-11 NMSA 1978;
- The right to simple, non-technical information explaining procedures, remedies and rights during audit, protest and collection proceedings under the Tax Administration Act;

- The right to receive an explanation of audit results and the basis for audits, assessments or denials of refunds that identify tax, interest or penalty due;
- The right to seek review through formal or informal proceedings of findings or unfavorable decisions arising from determinations during audit or protest procedures according to Sec. 7-1-24 NMSA 1978;
- The right to have your tax information kept confidential unless otherwise specified by law in Sec. 7-1-8 NMSA 1978;
- The right to an abatement of an assessment of taxes incorrectly, erroneously or illegally made (Sec. 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 (Sec. 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 Sec. 7-1-16 NMSA 1978. If you become a delinquent taxpayer, upon notice of delinquency you have the right to timely notice of

- collection actions that require sale or seizure of your property under the Tax Administration Act, and
- The right to pay your tax obligations by installment payment agreements according to the provisions of Sec. 7-1-21 NMSA 1978.

Confidentiality Provisions:

Statutes regulating the confidentiality of your taxes continue to be strict. Sec. 7-1-8 NMSA 1978 requires the department to answer questions about whether a taxpayer is registered to do business in this state or is registered for other tax programs, but it does not allow employees to reveal whether you have filed a return. A hearing officer's written ruling on questions of evidence or procedure according to Sec. 7-1-24 NMSA 1978 may be made public, but not the name and identification number of the taxpayer requesting the ruling. Now included in public record are the monthly gasoline tax reports of numbers of gallons of gasoline and ethanol-blended fuels received and deducted, and the tax paid by each filer or payer of the tax. Identities of rack operators, importers, blenders, suppliers or distributors and the number of gallons of gasoline and other fuels are public record. The department may make known to the Gaming Control Board the tax returns

of license applicants and their affiliates.

Audit Provisions:

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

Administrative Hearing Procedures:

A department hearing officer may not engage as an employee in enforcing or formulating general tax policy other than to conduct hearings.

You may request the Secretary to determine if a hearing officer's activities have affected his or her impartiality, and the Secretary may assign the case to another hearing officer. Hearing officers may not communicate unilaterally about a matter you have protested while that matter is still pending. The Secretary 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 180 days from the filing date to approve or deny a statutory tax credit. If it does not act, the credit is approved. The Secretary decides whether a refund of tax due you may be offset against your other tax liabilities, and you will receive notice that the refund will be made accordingly. You are entitled to interest until the tax liability is credited with the refund amount. Please see the paragraph above on "Audit Provisions" for interest due you if the department does not offset a refund or credit against your other tax liabilities within the prescribed time. The department may make a direct refund of

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

Awarding of Costs and Fees:

If you prevail in an administrative or court proceeding brought by you or against you after July 1, 2003, under the Tax Administration Act, you will receive 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 Sec. 7-1-53 the department may enjoin a taxpayer from continuing in business after a hearing and until the delinquency is cleared.