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New Mexico Pass-Through Entity Guidance

<https://www.tax.newmexico.gov/businesses/corporate-income-franchise-tax-overview/pass-through-entity/> (visited 7/29/23)

S-corporations, limited liability companies and other pass-through entities doing business in the state must file a New Mexico income tax return.

This requirement includes entities registered to do business in the state, transacting business in, into or from the state, or receiving any income from property or employment within the state. The federal return that a pass-through entity is required or elects to file determines the New Mexico income tax return that the pass-through entity files. A pass-through entity may be required to file Form PTE, New Mexico Information Return for Pass-Through Entities, Form S-Corp, New Mexico Subchapter S Corporate Income and Franchise Tax Return, or Form FID-1, New Mexico Fiduciary Income Tax Return.

Effective January 1, 2012, a pass-through entity means a personal services business or any other business association other than:

- a sole proprietorship, an estate or trust that does not distribute income to beneficiaries;
- a corporation, limited liability company, partnership or other entity not a sole proprietorship taxed as a corporation for federal income tax purposes for the tax year;
- a partnership that is organized as an investment partnership in which the partners' income is derived solely from interest, dividends and sales of securities;
- a single-member limited liability company, qualified subchapter S subsidiary or other entity type that is treated as a disregarded entity for federal income tax purposes; or
- a publicly-traded partnership as defined in Subsection(b) of Section 7704 of the Internal Revenue Code.

If your business is a pass-through entity, file in New Mexico on or before the due date of your federal return for the tax year. New Mexico also requires you to deduct and withhold tax from each non-resident owner's allocable share of net income. The tax withheld is required to be remitted to the Department annually. See [Bulletin B-200.25](#) for a description of the new requirements. The pass-through entity must file and pay the tax using form RPD-41367, Annual Withholding of Net Income From a Pass-Through Entity Detail Report. Form RPD-41367 can be filed and paid electronically on the Department's web file services page or through a third-party software. If more than 50 payees, this report must be filed electronically. Annual statements of withholding should not be submitted to the Department, but must be submitted to the taxpayer using form [RPD-41359, Annual Statement of Pass-Through Entity Withholding](#), or 1099-Misc.

If the PTE has more than 50 New Mexico payees, and is unable to file electronically because a hardship exists and there is no reasonable access to the Internet in the taxpayer's community, the PTE may request Department approval to file by paper. The PTE may request approval by filing form [RPD-41350, E-file Exception Request Form](#). The request must be received by the Department at least 30 days before the taxpayer's electronic report is due.

In 2021, the State Legislature passed Senate Bill 410, which was signed into law. The law allows PTEs to pay the withholding tax due from an owner as the result of a positive federal adjustment. Beginning 1/1/2021, all federal adjustments will be reported on form TRD-41413, Federal Adjustment Report. For more information and guidance, refer to the 2022 PTW-D Pass-Through Entity Withholding Detail Report (NM Form #RPD-41367)

In 2022, the State Legislature passed House Bill 102, which was signed into law. The law allows PTE to make estimated payments in anticipation of having to file a Federal Adjustment Report (Form #RPD41413) with a composite return (Form #RPD-41367). The estimated payments are made using voucher AMD-FAR. Typically this is done to minimize underpayment penalties and interest.

Contact Information

Taxation and Revenue Department

P.O. Box 25127

Santa Fe, NM 87504-5127

For assistance understanding the forms, call (866)285-2966 or (505) 827-0825.

Or for tax return help, email us at CIT.TaxReturnHelp@state.nm.us.

For assistance about state tax policies, legislation, regulations and ruling email us at policy.office@state.nm.us

Links

[Manage your account online](#)

[All Forms & Publications](#)

[FYI-350: Corporation Income Tax and Corporation Franchise Tax](#)

[B-200.25 Withholding Tax on Owners of a Pass-Through Entity](#)

[Pass-Through Entity \(PTEs\)](#)

Title	Open File
Film Production	
Other PTE-Related Forms	
Pass-Through Entity Return Forms	

Search files: [Search](#)

Title	Open File
01. 2022 PTW Detail Report For Annual Withholding of Net Income From a PTE, RPD-41367	Open File

Title	Open File
02. 2022 PTW Detail Report Instructions	Open File
03. 2022 PTW-PV Payment Voucher	Open File
04. 2022 PTW-EXT Extension Payment Voucher	Open File
05. 2022 PTW-ES Estimated Payment Voucher	Open File
06. RPD-41373 PTW Application for Refund of Tax Withheld From a PTE	Open File

FREQUENTLY ASKED QUESTIONS ABOUT DIRECT TAXATION OF PASS-THROUGH ENTITIES

Recent changes to the tax code permit pass-through entities, (“PTEs”), to make direct payments of income tax with respect to some of their partners or members, instead of requiring reporting and payment of taxes by the partners or members of the PTEs on their income tax returns. The Taxation and Revenue Department, (the “Department”), has received questions about the consequences of these changes. Below are some of the frequently asked questions, and responses from the Department.

Please note: The Department cannot advise taxpayers whether it will be to their benefit to have the PTE make the election to be taxed directly at the entity level, or on the effect any such election will have on partners’ or members’ individual state or federal taxes. Because of the interplay between state tax and federal tax rules, the effect of an election may vary among partners or members. PTEs and their partners and members should consult with their tax professionals prior to making any election.

When does the PTE have to make the election to be taxed directly?

The PTE will make the election to file the Entity Level Tax by filing the RPD-41367, PTW-D Pass-Through Entity Withholding Detail Report and selecting the “Entity Level Tax” under Section D. Reporting Detail. This election does require additional information to be reported within the return.

How does the PTE decide how to make the election? Do all the partners or members of the PTE have to agree?

The partners or members of the PTE have to determine whether the PTE will make the election. The agreement among the partners or members should control that decision. Note that the election will affect all the partners or members. The entity cannot elect to pay tax directly on the income of some of its partners or members, but not others. The election is to pay tax directly on all distributed net income.

How does the election impact the duty to pay estimated taxes? For the PTE? For the partners or members?

The PTE does have a duty to pay estimated taxes. But for most PTEs, such estimated tax payments are due on or before the due date of the federal tax return required for the PTE.

The 2022 PTW-D does allow for estimated payments and return payments for the Entity Level Tax. For those taxpayers who would like to make an estimated payment, the Department will release a PTW-ES voucher type in January of 2023. If a taxpayer wishes to make an estimated payment prior to the end of tax year 2022, they can make a return payment against the PTW account on the [Taxpayer Access Point \(TAP\)](#). If you are a new taxpayer or do not currently have a PTW account in TAP, you can use a paper payment voucher. We have provided our 2022 PTW-ES and PTW-PV on our website: <https://www.tax.newmexico.gov/forms-publications/>. To locate the vouchers, use the following folder path: Tax Professionals > PTW Payment Vouchers. Please note this is a temporary solution to meet the needs of the taxpayers as we make a full transition in to the 2022 PTW-D changes.

Is the election irrevocable, or can it be changed each tax year?

The election is made for each tax year on Form PTW-D and applies only to that tax year. Note, however, that once the election is made for a tax year, the election for that tax year cannot be changed by filing an amended return.

What if the PTE withheld and paid taxes for its partners or members, and then elects to be taxed directly? Can the amounts withheld be re-characterized as payments by the PTE?

Yes. Any payment made for the benefit of a partner or member may also be a payment for the PTE if the entity elects to pay entity level tax when filing the return. However, in order to avoid any complications with recharacterization of amounts already paid on behalf of another, the Department suggests that the taxpayer file amended returns and applications for refunds, and that the PTE then pay the tax directly itself.

How does the election affect the partners or members of the PTE?

Net income subject to the entity-level tax is exempt from income taxation. Any net income on which the PTE does not pay tax is not exempt.

What income of the PTE is taxed directly? Is any income excluded?

Four categories of income are excluded from the PTE's taxable net income: (1) allocations of income to the United States or the State of New Mexico and any of its political subdivisions; (2) allocations of income to a federally recognized Indian nation, tribe or pueblo located wholly or partially in New Mexico, or any political subdivision thereof; (3) allocations of income to 501(c)(3) organizations; and, (4) allocations of income to a corporation that would include the income in its New Mexico corporate income tax return as part of its unitary business income. The rest of the PTE's net income is taxed directly when it makes the election.

The law says that the PTE is taxed at the highest tax rate. Is that the highest personal income tax rate or the highest corporate income tax rate?

The taxable net income of the PTE is taxed at the higher of the personal or corporate income tax rate. The highest rate for both personal and corporate income taxes is currently 5.9%.

How does the PTE treat deductions? Are the same deductions that are available to the partners or members also available to the PTE?

The Department believes that deductions that are available to a partner or member should also be available to the PTE when it elects to pay tax directly, to the extent that the deduction relates to

income earned by the PTE. For example, if the PTE has capital gain income, since the individual partners would be entitled to a deduction, the PTE would also be entitled to the deduction under Section 7-2-34 for that income. Note that the deduction would be in proportion to the amount of distributed net income allocated to partners eligible for the deduction. In other words, the deduction may only be taken against the net income on which the PTE is paying tax directly that would be allocated to individuals, which excludes any capital gains allocable to the four categories set out above. The Department notes that while it believes this is the intent of the legislation, the statutory language is unclear as to the treatment of deductions with respect to direct tax paid by PTEs, and we expect that we or others will be seeking clarification from the Legislature.

How does the PTE treat credits, especially credits that are refundable or that may be carried forward?

Any credit that is specific to a corporate or individual partner cannot be claimed if the election to pay at the entity level is made. If the partners have a credit that they can claim on either the personal income tax return or a specific corporate return, they should file and claim that credit on that income tax return. Many credits in the Income Tax Act and the Corporate Franchise Tax Act are specific to those individuals or entities and can only be claimed by those specific individuals or entities on the appropriate income tax return called for by each credit in statute.

Note that there is an exception for the Film Production Tax Credit, which may be claimed by the PTE. The Film Production Tax Credit may be claimed directly by the PTE on its information return and may therefore be applied directly towards entity-level tax.

How does the PTE treat net operating losses, (“NOLs”)?

PTEs with NOLs should not elect to pay income taxes directly at the present time. The Department will develop rules governing use of NOLs by PTEs, and the carry-forward effects of an election by a PTE that has NOLs.

If one of the partners or members of the PTE is a corporation, can the PTE elect to pay taxes directly? Can the PTE pay the taxes owed by a corporate partner or member of the PTE?

The PTE cannot pay income tax directly with respect to any income allocable to a corporate partner that would include the income from the PTE in its New Mexico corporate income tax return as part of its unitary business income. The PTE will continue to withhold income taxes on behalf of such partners or members.

What if one of the partners or members of the PTE is itself a PTE, such as a tiered partnership? Can each partner or member make the election?

Yes, each partner in a tiered partnership makes its own, separate election. Each partner at each level of a tiered partnership may determine whether or not to make the election. So, for example, if Partnership A is a partner of Partnership B, both A and B can separately decide whether to make the election.

How does the PTE treat net operating losses, ("NOLs")?

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