
7-3A-2. DEFINITIONS.-- As used in the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act:

A. "department" means the taxation and revenue department, the secretary of taxation and revenue or any employee of the department exercising authority lawfully delegated to that employee by the secretary;

B. "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended;

C. "net income" means, for any pass-through entity:

(1) in the case of an owner that is taxed as a corporation for federal income tax purposes, "net income" as defined in the Corporate Income and Franchise Tax Act; and

(2) for all other owners, "net income" as defined in the Income Tax Act;

D. "oil and gas" means crude oil, natural gas, liquid hydrocarbons or any combination thereof, or carbon dioxide;

E. "oil and gas proceeds" means any amount derived from oil and gas production from any well located in New Mexico and payable as royalty interest, overriding royalty interest, production payment interest, working interest or any other obligation expressed as a right to a specified interest in the cash proceeds received from the sale of oil and gas production or in the cash value of that production, subject to all taxes withheld therefrom pursuant to law; "oil and gas proceeds" excludes "net profits interest" and other types of interest the extent of which cannot be determined with reference to a specified share of the oil and gas production and excludes any amounts deducted by the remitter from payments to interest owners or paid by interest owners to the remitter that are for expenses related to the production from the well or cessation of production from the well for which the interest owner is liable;

F. "owner" means a partner in a partnership not taxed as a corporation for federal income tax purposes for the taxable year, a shareholder of an S corporation or of a corporation other than an S corporation that is not taxed as a corporation for federal income tax purposes for the taxable year, a member of a limited liability company or any similar person holding an ownership interest in any pass-through entity. "Owner" also means a performing artist to whom payments are due from a personal services business;

G. "partnership" means a combination of persons, including a partnership, joint venture, common trust fund, association, pool or working agreement, or any other combination of persons that is treated as a partnership for federal income tax purposes;

H. "pass-through entity" means a personal services business or any other business association other than:

(1) a sole proprietorship;

(2) an estate or trust that does not distribute income to beneficiaries;

(3) a corporation, limited liability company, partnership or other entity not a sole proprietorship taxed as a corporation for federal income tax purposes for the taxable year;

(4) a partnership that is organized as an investment partnership in which the partners' income is derived solely from interest, dividends and sales of securities;

(5) a single member limited liability company that is treated as a disregarded entity for federal income tax purposes; or

(6) a publicly traded partnership as defined in Subsection (b) of Section 7704 of the Internal Revenue Code;

I. "person" means an individual, club, company, cooperative association, corporation, estate, firm, joint venture, partnership, receiver, syndicate, trust or other association, limited liability company, limited liability partnership or gas, water or electric utility owned or operated by a county or municipality and, to the extent permitted by law, a federal, state or other governmental unit or subdivision or an agency, a department or an instrumentality thereof;

J. "personal services business" means a business organization that receives payments for the services of a performing artist for purposes of the film production tax credit;

K. "remittee" means a person that is entitled to payment of oil and gas proceeds by a remitter; and

L. "remitter" means a person that pays oil and gas proceeds to any remittee.

(Laws 2012, Chapter 40, Section 1)

3.3.5.9 OIL AND GAS PROCEEDS

A. The following are not oil and gas proceeds for the purposes of the Oil and Gas Proceeds Withholding Tax Act and are not subject to the withholding tax imposed by that Act, when payment is not offset against a share of future production: advance royalty payments, bonus payments, minimum royalty payments, shut-in payments and rental payments.

B. If the production is from a well subject to a unit or communitization agreement whose area crosses state boundaries, the amount attributable to "oil and gas production from any well located in New Mexico" may be derived through the allocation methodology set out in the agreement.

C. If the amount received by the remitter has had severance taxes or other expenses deducted prior to the time the remitter receives it, then the remitter shall be required to withhold only from the amount it received.

[3.3.5.9 NMAC – N, 10/15/03]

7-3A-3. WITHHOLDING FROM OIL AND GAS PROCEEDS AND NET INCOME.--

A. Except as otherwise provided in this section, a remitter shall deduct and withhold from each payment of oil and gas proceeds being made to a remittee for each quarter an amount equal to the rate specified in Subsection D of this section multiplied by the amount prior to withholding that otherwise would have been payable to the remittee.

B. Except as otherwise provided in this section, a pass-through entity shall deduct and withhold from each owner's allocable share of net income for that calendar year an amount equal to the rate specified in Subsection D of this section multiplied by the owner's allocable share of that net income, reduced, but not below zero, by the amount required to be withheld from the owner's allocable share of net income under Subsection A of this section.

C. The obligation to deduct and withhold from payments or allocable net income as provided in Subsections A and B of this section does not apply to payments that are made to:

(1) a corporation whose principal place of business is in New Mexico or an individual who is a resident of New Mexico;

(2) remittees with a New Mexico address as shown on internal revenue service form 1099-Misc or a successor form or on a *pro forma* 1099-Misc or a successor form for those entities that do not receive an internal revenue service form 1099-Misc;

(3) the United States, this state or any agency, instrumentality or political subdivision of either;

(4) any federally recognized Indian nation, tribe or pueblo or any agency, instrumentality or political subdivision thereof; or

(5) organizations that have been granted exemption from the federal income tax by the United States commissioner of internal revenue as organizations described in Section 501(c)(3) of the Internal Revenue Code. However, the obligation to deduct and withhold from payments of allocable net income to organizations identified in this paragraph applies if that income constitutes unrelated business income.

D. Except as provided in Subsection H of this section, the rate of withholding shall be set by a department directive; provided that the rate may not exceed the higher of the maximum bracket rate set by Section 7-2-7 NMSA 1978 for the taxable year or the maximum bracket rate set by Section 7-2A-5 NMSA 1978 for the taxable year; and provided further that remitters shall be given ninety days' notice of a change in the rate.

E. If a remitter receives oil and gas proceeds from which an amount has been deducted and withheld pursuant to the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act or a pass-through entity has deducted and withheld an amount pursuant to the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act from the allocable share of net income of an owner that is also a pass-through entity, the remitter or payee pass-through entity may take credit for that amount in determining the

amount the remitter or payee pass-through entity must withhold and deduct pursuant to this section.

F. If the amount to be withheld from all payments to a remittee in a calendar quarter has not exceeded thirty dollars (\$30.00) and a payment to a remittee is less than ten dollars (\$10.00), no withholding is required. If the amount to be withheld from an owner's allocable share of net income in any calendar year is less than one hundred dollars (\$100), no withholding is required.

G. Except as provided in Subsection H of this section, at the option of a remitter or pass-through entity, a remitter or pass-through entity may agree with a remittee or an owner that the remittee or owner pay the amount that the remitter or pass-through entity would have been required to withhold and remit to the department on behalf of the remittee or owner pursuant to the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act. The payments by the remittee or owner shall be remitted on the dates set forth in Section 7-3A-6 NMSA 1978 on forms and in the manner required by the department.

H. Excluding wages, a personal services business shall deduct and withhold an amount equal to the owner's allocable share of net income multiplied by the highest rate for single individuals provided in Section 7-2-7 NMSA 1978.

I. If the remittee or owner is an insurance company and falls under the provisions of Section 59A-6-6 NMSA 1978, no withholding is required pursuant to this section.

(Laws 2012, Chapter 40, Section 2)

3.3.5.7 DEFINITIONS: For the purposes of 3.3.5 NMAC:

A. "gross amount" includes amounts deducted by the remitter for expenses and severance taxes, but does not include amounts deducted for expenses or taxes prior to receipt by the remitter. If a taxpayer receives a Form 1099-MISC for its oil and gas proceeds, the gross amount is the amount reported on federal Form 1099-MISC in box 2, royalties, and in box 7, nonemployee compensation; and

B. "resident of New Mexico" means (1) an individual domiciled in this state during all of the taxable year, or (2) an individual other than an individual described in Subsection D of ~~[3.2.1.9]~~ 3.3.1.9 NMAC who is physically present in this state for a total of one hundred eighty-five (185) days or more in the aggregate during the taxable year, regardless of domicile or (3) an individual who moves into this state with the intent to make New Mexico his permanent domicile; ~~and~~

~~C. "net income" means "net income" as defined in Section 7-3A-2C NMSA 1978, after appropriate allocation and apportionment to New Mexico in accordance with the Uniform Division of Income for Tax Purposes Act].~~

[3.3.5.7 NMAC - N, 10/15/03; A, 12/15/10; A, XXX]

3.3.5.8 EFFECTIVE DATE OF OIL AND GAS PROCEEDS WITHHOLDING REQUIREMENTS

The withholding requirements imposed by Section 7-3A-3 NMSA 1978 apply to payments made on or after October 1, 2003, regardless of production date.
[3.3.5.8 NMAC – N, 10/15/03]

3.3.5.10 WITHHOLDING RATES

A. For periods beginning on or after January 1, 2005 and before January 1, 2011, the rate of withholding shall equal the maximum bracket rate set by Section 7-2-7 NMSA 1978 for the taxable year.

B. For periods beginning on or after January 1, 2011, the rate of withholding pursuant to the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act shall be set by directive of the secretary. The withholding rate set in the directive shall be effective no earlier than ninety (90) days after the date on which the directive is promulgated. The directive shall be posted on the taxation and revenue department's web site, along with past, current and, when the rate is announced to change at a future time, future withholding rates and the time periods to which they pertain.

[3.3.5.10 NMAC - N, 10/15/03; A, 12/15/10]

3.3.5.11 WITHHOLDING MINIMUMS:

A. With respect to oil and gas proceeds, no withholding from a payment to a remittee is required if:

- (1) the sum of all payments, including the subject payment, to that remittee by the remitter in the calendar quarter does not exceed thirty dollars (\$30.00); and
- (2) the amount to be withheld from the subject payment is less than ten dollars (\$10.00).

B. With respect to net income from pass-through entities, no withholding is required from a payment to an owner if the sum of all payments, including the subject payment, to that owner by the pass-through entity in the calendar [~~quarter~~] year is less than [~~thirty dollars (\$30.00)~~] one hundred dollars (\$100.00).

C. The remitter may withhold from a payment described in Subsection A or B of this section without creating a right of action by the remittee or owner against the remitter or pass-through entity.

D. This version of 3.3.5.11 NMAC applies to payments for periods beginning on or after January 1, [~~2011~~] 2012.

[3.3.5.11 NMAC - N, 10/15/03; A, 12/15/10; A, XXX]

3.3.5.12 REMITTEES WITH A NEW MEXICO ADDRESS: With respect to payments made for periods prior to January 1, 2011, a remitter is not obligated to deduct and withhold under the Oil and Gas Proceeds Withholding Tax Act from payments to a remittee with a New Mexico address. The relevant address for purposes of Section 7-3A-3 NMSA 1978 is the remittee address to which federal Form 1099-MISC is mailed or otherwise transmitted, or the address that is shown on federal Form W-9 or similar form. If federal law does not require the remitter to mail a federal Form 1099-MISC to the remittee, and the remitter has not received a federal Form W-9 or similar form, the relevant address is the address to which the oil and gas proceeds are mailed or otherwise transmitted. This section does not apply to payments for periods beginning on or after January 1, 2011. See 3.3.5.16 NMAC for equivalent provisions for withholding for periods beginning on or after January 1, 2011.

[3.3.5.12 NMAC - N, 10/15/03; A, 12/15/10]

3.3.5.13 PAYMENTS TO 501(C)(3) ORGANIZATIONS: A remitter or pass-through entity is not obligated to deduct and withhold under the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act from payments to a remittee or owner granted exemption from the federal income tax by the United States commissioner of internal revenue as an organization described in Section 501(c)(3) of the Internal Revenue Code. However, the obligation to deduct and withhold from payments of allocable net income to a remittee or owner of this type of organization does apply if that income constitutes unrelated business income. Acceptable proof that a remittee or owner is a 501(c)(3) organization includes a copy of the remittee's or owner's federal Form W-9, or a copy of the determination letter from the internal revenue service granting the remittee or owner 501(c)(3) status. This version of 3.3.5.13 NMAC applies to payments for periods beginning on or after January 1, 2011.

[3.3.5.13 NMAC - N, 10/15/03; A, 12/15/10; A, XXX]

3.3.5.16 PRINCIPAL PLACE OF BUSINESS OR RESIDENCE IN NEW MEXICO:

~~[A.—Remitters and pass-through entities are not required to withhold from corporations whose principal place of business is in New Mexico or from individuals who are residents of New Mexico. If the corporation establishes that its place of business is in New Mexico or an individual establishes that his or her residence is in New Mexico, it does not matter where remittances to the corporation or individual are sent.~~

~~—B.—Corporations: If a remitter or pass-through entity is not excused from the obligation to deduct and withhold from payments to the corporation because the corporation is described in Paragraphs (2) through (4) of Subsection C of Section 7-3A-3 NMSA 1978 or the remitter or pass-through entity is party to an agreement in force with the remittee or owner pursuant to Subsection H of Section 7-3A-3 NMSA 1978, the obligation to deduct and withhold remains in force until the remitter or owner establishes that the corporation's principal place of business is in New Mexico except as provided in Subsection E of this section.~~

~~—(1)—Corporations incorporated in New Mexico: The remitter or pass-through entity may establish that the corporation's principal place of business is in New Mexico by acquiring and retaining a copy of the corporation's incorporation papers, sufficient portions of those papers to demonstrate incorporation in New Mexico, or information from the public regulation commission website indicating that the corporation is a New Mexico corporation in good standing and its address.~~

~~—(2)—Corporations incorporated in New Mexico or elsewhere: The remitter or pass-through entity may establish that the corporation's principal place of business is in New Mexico by acquiring and retaining from the corporation a statement, signed under penalty of perjury or notarized, that the corporation's principal place of business is in New Mexico and setting forth the physical location of that principal place of business; provided that a post office box number, address of a postal forwarding service or equivalent addresses or the address of a bank, agent or nominee of the corporation are not acceptable as a physical location of the corporation for the purposes of Section 7-3A-3 NMSA 1978.~~

~~—C.—Individuals: If a remitter or pass-through entity is not excused from the obligation to deduct and withhold from payments to the individual because the remitter or pass-through entity is party to an agreement in force with the remittee or owner pursuant to Subsection H of Section 7-3A-3 NMSA 1978, the obligation to deduct and withhold remains in force until the~~

remitter or owner establishes that the individual is a resident of New Mexico except as provided in Subsection E of this section. The remitter or pass-through entity may establish that the individual is a resident of New Mexico by acquiring and retaining a statement, signed under penalty of perjury or notarized that the individual is a resident of New Mexico and setting forth the physical location of the individual's abode in New Mexico; provided that a post office box number, address of a postal forwarding service or equivalent addresses or the address of a bank, agent or nominee of the individual are not acceptable as a physical location of the individual for the purposes of Section 7-3A-3 NMSA 1978.]

A. If a remitter or pass-through entity is not excused from the obligation to deduct and withhold from payments because of the provisions of the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act, the obligation to deduct and withhold remains in force until the remitter or owner establishes that the corporation's principal place of business or the individuals residence is in New Mexico except as provided in Subsection E of this section.

B. Once the corporation establishes that its place of business is in New Mexico or an individual establishes that his or her residence is in New Mexico, it does not matter where remittances to the corporation or individual are sent.

C. A remitter or pass-through entity may establish residency if the address provided by the remittee or owner, to which federal Form 1099-MISC, pro forma 1099-MISC or successor form is to be mailed. A remitter or pass-through entity may also accept a declaration from the remittee or owner, stating that the individual is a resident of New Mexico or that the corporation maintains a principal place of business in New Mexico.

D. The obligation to deduct and withhold applies with respect to all remittees and owners that are not corporations or individuals regardless of the remittee's or owner's physical or mailing address, effective January 1, 2011, unless the remitter or pass-through entity is party to an agreement in force with the remittee or owner pursuant to Subsection [H] G of Section 7-3A-3 NMSA 1978.

E. This version of 3.3.5.16 NMAC applies to payments for periods beginning on or after January 1, 2011. However, to ease the transition to the new requirements of this section, remitters and pass-through entities may continue to rely on New Mexico addresses pursuant to 3.3.5.12 NMAC for withholding for calendar quarters ending prior to January 1, 2012.

[3.3.5.16 NMAC - N, 12/15/10; A, XXX]

3.3.5.18 DISREGARDED ENTITIES

A. The term "pass-through entity," ~~[in addition to the exclusions listed in]~~ pursuant to Subsection H of Section 7-3A-2 NMSA 1978, ~~[also excludes entities treated as "disregarded entities"]~~ excludes a single member limited liability company that is treated as a disregarded entity for federal income tax purposes. These include qualified subchapter S subsidiaries, as defined in 26 USC Section 1361(b)(3)(B), partnerships electing under 26 USC Section 761(a) to be treated as disregarded entities, qualified joint ventures, as defined in 26 USC Section 761(f), and qualified entities defined in internal revenue service revenue procedure 2002-69.

B. When a business association is treated as a disregarded entity for federal income tax purposes for only part of the association's taxable year, the association is subject to the withholding and reporting requirements of the Oil and Gas Proceeds and Pass-Through Entity Tax Withholding Act for that portion of the taxable year in which it is not treated as a disregarded entity and must submit an annual statement of withholding pursuant to Section 7-3A-7 NMSA 1978 covering that portion its taxable year in which the association was not treated

as a disregarded entity.
[3.3.5.18 NMAC - N, 12/15/10; A, XXX]

7-3A-5. REMITTERS AND PASS-THROUGH ENTITIES LIABLE FOR AMOUNTS DEDUCTED AND WITHHELD--EXCEPTIONS.--

A. Every remitter or pass-through entity is liable for:

(1) amounts required to be deducted and withheld by the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act regardless of whether the amounts were in fact deducted and withheld; and

(2) for the amounts that a remittee or an owner has agreed to remit pursuant to Subsection G of Section 7-3A-3 NMSA 1978, once the department has notified the remitter or pass-through entity that the remittee or owner has failed to remit.

B. A remitter or pass-through entity is not liable for amounts required to be deducted and withheld by the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act but not deducted or withheld if:

(1) the remitter or pass-through entity fails to deduct and withhold the required amounts and if the tax against which the required amounts would have been credited is paid; or

(2) the remitter's or pass-through entity's failure to deduct and withhold the required amounts is due to reasonable cause.

(Laws 2012, Chapter 40, Section 4)

3.3.5.14 "REASONABLE CAUSE" FOR NOT WITHHOLDING: ~~[In addition to the cause set forth in Subsection C of Section 7-3A-5 NMSA 1978,]~~ The department will accept as "reasonable cause" for not withholding the following:

A. written notification from a remittee that the payment is subject to further distribution by the remittee as a remitter to working interest owners, royalty interest owners, overriding royalty interest owners or production payment interest owners;

B. internal documentation such as signed division orders demonstrating that the payment is subject to further distribution by the remittee as a remitter to working interest owners, royalty interest owners, overriding royalty interest owners or production payment interest owners;

C. ~~[through December 31, 2011,]~~ reliance on a New Mexico address, shown on internal revenue service Form 1099-MISC, or a successor form, or on a *pro forma* 1099-MISC, or a successor form, for those entities that do not receive an internal revenue service Form 1099-MISC, supplied by the remittee; the remitter may rely on a New Mexico address supplied by the remittee for up to thirty days after receiving written notice from the remittee of a change in address to an address outside New Mexico;

D. receipt of a declaration from the remittee or owner, stating that the individual is a resident of New Mexico or that the corporation maintains a principal place of business in New Mexico;

~~[D]~~ E. receipt of a written agreement from a remittee or owner under 3.3.5.17 NMAC that the remittee or owner will timely report and pay amounts required to be withheld and remitted;

~~[E]~~ F. inability to make payment of withholding from net income for the quarter due to nonavailability of cash or due to contracts and other binding written covenants with unrelated third parties, unless cash payments have been made to any owner during the quarter, in which

case the pass through entity is liable for payment of the withholding amount due up to the extent of the cash payment made during the quarter;

[F] G. with respect to tax years 2014 through 2018, the pass-through entity has elected pursuant to 26 USC 108(i) to defer income from the discharge of indebtedness in connection with the reacquisition after December 31, 2008 and before January 1, 2011 of an applicable debt instrument for the period 2014 through 2018 and the entity has insufficient cash to remit the withholding amount due on the deferred income reported in the year; and

[G] H. any other reason acceptable to the secretary, to be determined on a case-by-case basis.

[3.3.5.14 NMAC - N, 10/15/03; A, 12/15/10; A, XXX]

3.3.5.17 OPTIONAL WITHHOLDING PAYMENT BY REMITTEE, OWNER:

A. A remitter may enter into an agreement with a remittee that the remittee will remit to the taxation and revenue department at the time and in the manner required by the department the amounts that the remitter is required to withhold and remit with respect to payments to the remittee. Similarly, a pass-through entity may enter into an agreement with an owner that the owner will remit to the department the amounts that the pass-through entity is required to withhold and remit with respect to payments to the owner.

B. The agreement must be in a form prescribed by the department or substantially equivalent to such form. It must be in the remitter's or pass-through entity's possession at the time it files its annual statement of withholding pursuant to Section 7-3A-7 NMSA 1978. The agreement may remain in effect for a single taxable year, multiple taxable years, or an indefinite term, and may be revoked or amended on mutual agreement of the parties.

C. Upon notice by the department that the remittee or owner has not complied with the requirements of the agreement, the remitter or pass-through entity must revoke the agreement and withhold and remit with respect to future payments to the remittee or owner pursuant to the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act. Once an agreement has been revoked a new agreement between the remitter and remittee or between the pass-through entity and the owner, may not be entered into for two years from the date the department notifies the remitter or the pass-through entity of the remittee's or owner's failure to pay amounts required by the agreement.

[~~C.~~]D. Remittances to the department pursuant to an agreement by a remittee or owner that is subject to corporate income tax or personal income tax may be credited against the remittee's or owner's estimated tax liability pursuant to Section 7-2A-9.1 NMSA 1978 or Section 7-2-12.2 NMSA 1978 since the remittances relate to the remitter's or owner's own corporate income tax or personal income tax liability.

[3.3.5.17 NMAC - N, 12/15/10; A, XXX]

7-3A-7. STATEMENTS OF WITHHOLDING--
A. Every remitter shall:

(1) file an annual statement of withholding for each remittee that:

(a) is in electronic format and includes a form 1099-Misc or a successor form or on a *pro forma* 1099-Misc or a successor form for those entities that do not receive an internal revenue service form 1099-Misc;

(b) is filed with the department on or before the last day of February of the year following that for which the statement is made; and

(c) includes the total oil and gas proceeds paid to the remittee and the total amount of tax withheld for the calendar year; and

(2) provide a copy of the annual statement of withholding to the remittee on or before February 15 of the year following the year for which the statement is made.

B. The department shall develop and adopt rules regarding the filing of a report pursuant to this section and the attachment of form 1099-Misc or a successor form or a *pro forma* 1099-Misc or a successor form, if the remitter is not able to file those forms in an electronic format.

C. Every remitter shall file an electronic report of the remitees who have certified that the remittee is responsible for filing the remittee's own oil and gas proceeds tax report and for paying the remittee's oil and gas proceeds tax liability due.

D. Every pass-through entity doing business in New Mexico shall:

(1) file an annual information return with the department that:

(a) is filed on or before the due date of the entity's federal return for the taxable year;

(b) is signed by the business manager or one of the owners of the pass-through entity; and

(c) contains all information required by the department, including the pass-through entity's gross income; the pass-through entity's net income; the amount of each owner's allocable share of the pass-through entity's net income; and the name, address and tax identification number of each owner entitled to an allocable share of net income; and

(2) 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 allocable share of net income.

E. The department shall compile each year the annual statements of withholding received from the remitters and the annual information returns received from pass-through entities and compare the compilations with the records of corporations, individuals, estates or trusts filing income tax returns.

(Laws 2012, Chapter 40, Section 6)

3.3.5.15 STATEMENTS OF WITHHOLDING AND INFORMATION RETURNS:

A. Each remitter shall:

(1) provide a federal Form 1099-MISC, or a successor form, or for those entities that do not receive an internal revenue service Form 1099-MISC, a *pro forma* 1099-MISC, or a successor form, to each payee on or before February 15 of the year following the year for which the statement is made, reflecting the proceeds paid to the payee and the state tax withheld; and

(2) file an "annual ~~summary of~~ oil and gas proceeds withholding tax" information return with the department on or before the last day of February of the year following the year for which the statement is made that includes sufficient detail so that the department may verify that non-residents receiving income from New Mexico sources are paying New Mexico tax on that income; and

~~(3) attach to the "annual summary of oil and gas proceeds withholding tax" information return copies of federal Form 1099-MISC for each payee of oil and gas proceeds from whom withholding was required. Remitters who submit federal Form 1099-MISC information returns by magnetic media or electronic transfer using the combined federal/state program, with the records coded to be forwarded to New Mexico, are not required to submit paper copies of federal Form 1099-MISC with the annual summary].~~

B. Remitters who are not required by federal law to file a federal Form 1099-MISC but have a withholding tax obligation pursuant to the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act must provide ~~[New Mexico an "annual statement of withholding of oil and gas proceeds,"]~~ the department a pro forma federal Form 1099-MISC, or a form containing equivalent information, to each payee and file a copy with the department to satisfy the filing requirements of the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act.

C. If a pass-through entity is not required to file a federal income tax return for the taxable year, the entity shall file an annual information return with the department not later than one hundred five (105) days after the end of its taxable year and provide to each of its owners sufficient information to enable the owner to comply with the provisions of the Income Tax Act or Corporate Income and Franchise Tax Act with respect to the owner's share of the net income. [3.3.5.15 NMAC - N, 10/15/03; A, 12/15/10; A, XXX]

3.3.5.19 E-FILING REQUIREMENTS:

A. annual withholding information detail reports must be filed with the department using a department-approved electronic medium; and

B. if a pass-through entity or a remitter has more than fifty payees, annual withholding information detail reports must be filed with the department using a department-approved electronic medium.

[3.3.5.19 NMAC - N, XXX]