

Taxation and Revenue Department  
Joseph M. Montoya Building  
Post Office Box 630  
Santa Fe, New Mexico 87504-0630

**TRD Publication 3.4, 3.13 AND 3.15 NMAC**

**Regulations Pertaining to the  
CORPORATE INCOME AND FRANCHISE TAX ACT  
Sections 7-2A-1 through 7-2A-30 NMSA 1978**

Revised March 2021

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**TRD Publication 3.4 & 3.15 NMAC**  
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**7-2A-1. SHORT TITLE.--Chapter 7, Article 2A NMSA 1978 may be cited as the "Corporate Income and Franchise Tax Act".  
(Laws 1986, Chapter 20, Section 32)**

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#### **3.4.1.8 - CITATION OF REGULATIONS**

Unless otherwise stated, all citations of statutes in Title 3, Chapter 4 NMAC pertaining to the Corporate Income and Franchise Tax Act are to the New Mexico Statutes Annotated, 1978 (NMSA 1978).

[1/7/92, 1/15/97; 3.4.1.8 NMAC - Rn, 3 NMAC 4.1.8, 12/14/00]

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**7-2A-2. DEFINITIONS.--** For the purpose of the Corporate Income and Franchise Tax Act and unless the context requires otherwise:

A. "bank" means any national bank, national banking association, state bank or bank holding company;

B. "apportioned net income" or "apportioned net loss" means net income allocated and apportioned to New Mexico pursuant to the provisions of the Corporate Income and Franchise Tax Act or the Uniform Division of Income for Tax Purposes Act, but excluding from the sales factor any sales that represent intercompany transactions between members of the filing group;

C. "base income" means the federal taxable income or the federal net operating loss of a corporation for the taxable year calculated pursuant to the Internal Revenue Code, after special deductions provided in Sections 241 through 249 of the Internal Revenue Code but without any deduction for net operating losses, as if the corporation filed a federal tax return as a separate domestic entity, modified as follows:

(1) adding to that income:

(a) interest received on a state or local bond exempt under the Internal Revenue Code;

(b) the amount of any deduction claimed in calculating taxable income for all expenses and costs directly or indirectly paid, accrued or incurred to a captive real estate investment trust; and

(c) the amount of any deduction, other than for premiums, for amounts paid directly or indirectly to a commonly controlled entity that is exempt from corporate income tax pursuant to Section 7-2A-4 NMSA 1978;

(2) subtracting from that income:

(a) income from obligations of the United States net of expenses incurred to earn that income;

(b) other amounts that the state is prohibited from taxing because of the laws or constitution of this state or the United States net of any related expenses;

(c) an amount equal to one hundred percent of the subpart F income, as that term is defined in Section 952 of the Internal Revenue Code, as that section may be amended or renumbered, included in the income of the corporation; and

(d) an amount equal to one hundred percent of the income of the corporation under Section 951A of the Internal Revenue Code, after allowing the deduction provided in Section 250 of the Internal Revenue Code; and

(3) making other adjustments deemed necessary to properly reflect income of the unitary group, including attribution of income or expense related to unitary assets held by related corporations that are not part of the filing group;

D. "captive real estate investment trust" means a corporation, trust or association taxed as a real estate investment trust pursuant to Section 857

of the Internal Revenue Code, the shares or beneficial interests of which are not regularly traded on an established securities market; provided that more than fifty percent of any class of beneficial interests or shares of the real estate investment trust are owned directly, indirectly or constructively by the taxpayer during all or a part of the taxpayer's taxable year;

E. "common ownership" means the direct or indirect control or ownership of more than fifty percent of the outstanding voting stock, ownership of which is determined pursuant to Section 1563 of the Internal Revenue Code, as that section may be amended or renumbered, of:

(1) a parent-subsidary controlled group as defined in Section 1563 of the Internal Revenue Code, except that fifty percent shall be substituted for eighty percent;

(2) a brother-sister controlled group as defined in Section 1563 of the Internal Revenue Code; or

(3) three or more corporations each of which is a member of a group of corporations described in Paragraph (1) or (2) of this subsection, and one of which is:

(a) a common parent corporation included in a group of corporations described in Paragraph (1) of this subsection; and

(b) included in a group of corporations described in Paragraph (2) of this subsection;

F. "consolidated group" means the group of entities properly filing a federal consolidated return under the Internal Revenue Code for the taxable year;

G. "corporation" means corporations, joint stock companies, real estate trusts organized and operated under the Real Estate Trust Act, financial corporations and banks, other business associations and, for corporate income tax purposes, partnerships and limited liability companies taxed as corporations under the Internal Revenue Code;

H. "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;

I. "filing group" means a group of corporations properly included in a return pursuant to Section 7-2A-8.3 NMSA 1978 for a particular taxable year;

J. "fiscal year" means any accounting period of twelve months ending on the last day of any month other than December;

K. "grandfathered net operating loss carryover" means:

(1) the amount of net loss properly reported to New Mexico for taxable years beginning January 1, 2013 and prior to January 1, 2020 as part of a timely filed original return, or an amended return for those taxable years filed prior to January 1, 2020, to the extent such loss can be attributed to one or more corporations that are properly included in the taxpayer's return for the first taxable year beginning on or after January 1, 2020;

(2) reduced by:

(a) adding back deductions that were taken by the

corporation or corporations for royalties or interest paid to one or more related corporations, but only to the extent that such adjustment would not create a net loss for such related corporations; and

(b) the amount of net operating loss deductions taken prior to January 1, 2020 that would be charged against those losses consistent with the Internal Revenue Code and provisions of the Corporate Income and Franchise Tax Act applicable to the year of the deduction; and

(3) apportioned to New Mexico using the apportionment factors that can properly be attributed to the corporation or corporations for the year of the net loss;

L. "Internal Revenue Code" means the United States Internal Revenue Code of 1986, as amended;

M. "net income" means:

(1) the base income of a corporation properly filing a tax return as a separate entity; or

(2) the combined base income and losses of corporations that are part of a filing group that is computed after eliminating intercompany income and expense in a manner consistent with the consolidated filing requirements of the Internal Revenue Code and the Corporate Income and Franchise Tax Act;

N. "net operating loss carryover" means the apportioned net loss properly reported on an original or amended tax return for taxable years beginning on or after January 1, 2020 by the taxpayer:

(1) plus:

(a) the portion of an apportioned net loss properly reported to New Mexico for a taxable year beginning on or after January 1, 2020, on a separate year return, to the extent the taxpayer would have been entitled to include the portion of such apportioned net loss in the taxpayer's consolidated net operating loss carryforward under the Internal Revenue Code if the taxpayer filed a consolidated federal return; and

(b) the taxpayer's grandfathered net operating loss carryover; and

(2) minus:

(a) the amount of the net operating loss carryover attributed to an entity that has left the filing group, computed in a manner consistent with the consolidated filing requirements of the Internal Revenue Code and applicable regulations, as if the taxpayer were filing a consolidated return; and

(b) the amount of net operating loss deductions properly taken by the taxpayer;

O. "net operating loss deduction" means the portion of the net operating loss carryover that may be deducted from the taxpayer's apportioned net income under the Internal Revenue Code as of January 1, 2018 for the taxable year in which the deduction is taken, including the eighty percent limitation of Section 172(a) of the Internal Revenue Code as of January 1, 2018 calculated on the basis of the taxpayer's apportioned net

income;

P. "person" means any individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, limited liability company, joint venture, syndicate or other association; "person" also means, to the extent permitted by law, any federal, state or other governmental unit or subdivision or agency, department or instrumentality thereof;

Q. "real estate investment trust" has the meaning ascribed to the term in Section 856 of the Internal Revenue Code, as that section may be amended or renumbered;

R. "related corporation" means a corporation that is under common ownership with one or more corporations but that is not included in the same tax return;

S. "return" means any tax or information return, including a water's-edge or worldwide combined return, a consolidated return, a declaration of estimated tax or a claim for refund, including any amendments or supplements to the return, required or permitted pursuant to a law subject to administration and enforcement pursuant to the Tax Administration Act and filed with the department by or on behalf of any person;

T. "secretary" means the secretary of taxation and revenue or the secretary's delegate;

U. "separate year return" means a properly filed original or amended return for a taxable year beginning on or after January 1, 2020 by a taxpayer reporting a loss, a portion of which is claimed as part of the net operating loss carryover by another taxpayer in a subsequent return period;

V. "state" means any state of the United States, the District of Columbia, the commonwealth of Puerto Rico, any territory or possession of the United States or political subdivision thereof or any political subdivision of a foreign country;

W. "state or local bond" means a bond issued by a state other than New Mexico or by a local government other than one of New Mexico's political subdivisions, the interest from which is excluded from income for federal income tax purposes under Section 103 of the Internal Revenue Code, as that section may be amended or renumbered;

X. "taxable income" means a taxpayer's apportioned net income minus the net operating loss deduction for the taxable year;

Y. "taxable year" means the calendar year or fiscal year upon the basis of which the net income is computed under the Corporate Income and Franchise Tax Act and includes, in the case of the return made for a fractional part of a year under the provisions of that act, the period for which the return is made;

Z. "taxpayer" means any corporation or group of corporations filing a return pursuant to Section 7-2A-8.3 NMSA 1978 subject to the taxes imposed by the Corporate Income and Franchise Tax Act;

AA. "unitary group" means a group of two or more corporations,

including a captive real estate investment trust, but not including an S corporation, an insurance company subject to the provisions of the New Mexico Insurance Code, an insurance company that would be subject to the New Mexico Insurance Code if the insurance company engaged in business in this state or a real estate investment trust that is not a captive real estate investment trust, that are:

- (1) related through common ownership; and
- (2) economically interdependent with one another as demonstrated by the following factors:

- (a) centralized management;
- (b) functional integration; and
- (c) economies of scale;

**BB. "water's-edge group"** means all corporations that are part of a unitary group, except:

- (1) corporations that are exempt from corporate income tax pursuant to Section 7-2A-4 NMSA 1978; and

- (2) corporations wherever organized or incorporated that have less than twenty percent of their property, payroll and sales sourced to locations within the United States, following the sourcing rules of the Uniform Division of Income for Tax Purposes Act; and

**CC. "worldwide combined group"** means all members of a unitary group, except members that are exempt from corporate income tax pursuant to Section 7-2A-4 NMSA 1978, irrespective of the country in which the corporations are incorporated or conduct business activity.

(Laws 2020 SS, Chapter 4, Section 2)

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### **3.4.1.9 – [RESERVED]**

[8/10/89, 1/7/92, 1/15/97; 3.4.1.9 NMAC - Rn & A, 3 NMAC 4.1.9, 12/14/00; Repealed 03/23/2021]

### **3.4.1.10 - INCOME FROM OBLIGATIONS OF GOVERNMENTS**

A. Income from United States government obligations.

- (1) Income from obligations issued by the United States are not includable in net income.

- (2) Because they are not obligations of the United States, income from investment in the following is includable in net income:

- (a) financial instruments guaranteed by the federal national mortgage association ("Fannie Maes"), the government national mortgage association ("Ginnie Maes"), the federal national home loan association ("Freddie Macs") and any similar organization whose income states are not prohibited by federal law from subjecting to income taxation;

- (b) financial instruments issued by the College Construction Loan Insurance Corporation or the National Consumer Cooperative Bank;

- (c) agreements ("repo's") to sell and repurchase United States government obligations; and

- (d) agreements ("reverse repo's") to purchase and resell United States

government obligations.

B. Income from obligations of Puerto Rico and territories and possessions of the United States. Income from obligations of the commonwealth of Puerto Rico and of Guam, the Virgin Islands, American Samoa, Northern Mariana Islands and other territories or possessions of the United States are includable in net income only to the extent that inclusion is not prohibited by federal law. Income from such obligations which New Mexico is prohibited from taxing by the laws of the United States may be deducted from net income.

C. Exclusion of certain income from mutual funds or trusts.

(1) Income from investments in mutual funds, unit investment trusts or simple trusts which are invested in obligations of the United States, obligations of the state of New Mexico or its agencies, institutions, instrumentalities or political subdivisions or obligations of the commonwealth of Puerto Rico or territories or possessions of the United States may be deducted from net income to the extent that such investment income is nontaxable income provided that:

(a) for the purposes of this subsection (3.4.1.10C NMAC), "nontaxable income" means income from investments in obligations of:

(i) the United States;

(ii) the state of New Mexico or any of its agencies, institutions, instrumentalities or political subdivisions;

(iii) the commonwealth of Puerto Rico, the income from which obligations states are prohibited from taxing by the laws of the United States; and

(iv) Guam, the Virgin Islands, American Samoa, Northern Mariana Islands or other territories or possessions of the United States, the income from which obligations states are prohibited from taxing by the laws of the United States; and

(b) the mutual fund, unit investment trust or simple trust provides to the investor an annual statement of the income, by source, which was distributed to the individual investor.

(2) Only that amount of income may be deducted which is shown on the statement as flowing through to the investor from obligations of the United States, of the commonwealth of Puerto Rico, of Guam, the Virgin Islands, American Samoa, Northern Mariana Islands or other territories or possessions of the United States or of the state of New Mexico or any of its agencies, institutions, instrumentalities or political subdivisions.

D. Expenses related to certain investment income.

(1) Because this investment income is exempt from income taxation by New Mexico, expenses of the taxpayer related to the earning of income from investments, directly or through mutual funds, unit investment trusts or simple trusts, in obligations of the United States, obligations of the state of New Mexico or its agencies, institutions, instrumentalities or political subdivisions or obligations of the commonwealth of Puerto Rico or territories or possessions of the United States may not be deducted from net income. To the extent that such expenses have been deducted in determining federal taxable income, the amount must be added back to net income.

(2) Income from investment in state and local bonds is subject to New Mexico income taxation. Expenses of the taxpayer related to the earning of income from investments, directly or through mutual funds, unit investment trusts or simple trusts, in state or local bonds are deductible in determining net income. To the extent that such expenses have not been deducted in determining federal taxable income, these amounts may be subtracted from net

income.

E. Income earned on "state or local bonds".

(1) Not included in the term "state or local bond" is any obligation of the commonwealth of Puerto Rico or of territories or possessions of the United States the income from which New Mexico is prohibited from taxing by the laws of the United States.

(2) For taxable years beginning on or after January 1, 1991, income from investing in any state or local bond, as that term is defined in Section 7-2A-2 NMSA 1978, is includable in base income.

(3) Income from investing in state or local bonds is to be included in base income in the year it is actually received without regard to federal tax treatment of the income, except that:

(a) the taxpayer may elect to report this income for New Mexico purposes on an accrual basis; and

(b) income from investing in state or local bonds earned or accrued before the first taxable year beginning on or after January 1, 1991, but which is received after that date is not includable in base income. Income is earned or accrued ratably, by assigning an equal amount of income to each day of the accrual period.

(4) Example 1: A, a New Mexico corporation, purchases a state of California municipal bond in 20X0 and receives semi-annual interest payments. A does not elect to report to New Mexico on an accrual basis. All income from this bond is included in base income. This income is included only as the interest payments are received.

(5) Example 2: B, a New Mexico corporation and calendar year filer, purchases a city of Los Angeles municipal bond in 20X0. This bond pays interest semi-annually on April 1 and October 1. B does not elect to report to New Mexico on an accrual basis. On April 10, 20X1, B receives \$1,000 of interest. Since this payment includes interest earned or accrued before January 1, 20X1, this income is to be allocated between the period prior to the taxable year and the period following December 31, 20X0. The income accrual period is 182 days in length (October 1, 20X0, through March 31, 20X1), of which 90 days are in B's first taxable year beginning on or after January 1, 20X1. B's 20X1 base income includes \$494.51 ( $\$1,000 \times 90/182$ ). The remaining \$505.49 is not subject to New Mexico corporate income tax.

(6) Example 3: C, a New Mexico corporation and calendar year filer, purchased a city of San Francisco municipal bond on January 1, 1981 for \$1,400. C does not elect to report accrued income on this bond for New Mexico corporate income tax purposes. Although this bond pays interest semi-annually, C bought it stripped and at a discount. C has no right to the interest. On January 1, 1995, C receives the bond principal of \$5,000. This is C's first and only payment on the bond. Since this payment includes income earned or accrued before January 1, 1991, the income is allocated between the period prior to January 1, 1991, and the period following December 31, 1990. The income accrual period is 5112 days, of which 1461 are after December 31, 1990. C's 1995 base income includes \$1,028.87 ( $((1461/5112) \times (\$5,000 - \$1,400))$ ). The remaining \$2,571.13 of income is not subject to New Mexico corporate income tax.

[1/7/92, 6/24/93, 11/17/95, 1/13/96, 1/15/97; 3.4.1.10 NMAC - Rn & A, 3 NMAC 4.1.10, 12/14/00; Rp 03/23/2021]

**3.4.1.11 - BASE INCOME FOR FILING AS A SEPARATE CORPORATE ENTITY:** For a corporation filing a separate return for taxable years beginning before January 1, 2020 and for a



corporation that is not part of a unitary group or is required to file a separate return under Regulation 3.4.10.16 for taxable years beginning on or after January 1, 2020, that corporation's base income shall be determined by completing a simulated federal corporate income tax return for the separate corporation. In completing the simulated federal return, only the income and expenses of the separate corporation will be allowed. The simulated return shall be prepared as if the corporate entity were filing a federal return as a separate corporation and not as a corporation included in a consolidated return. All provisions of the Internal Revenue Code which would apply to the filing as a separate corporation shall apply to the completion of the simulated return. Procedures and adjustments allowed by the Internal Revenue Code which apply to the filing of a federal consolidated return concerning the elimination of intercompany transactions or the sale or dissolution of one of the corporations within the federal consolidated group shall not be allowed when completing the simulated federal return for New Mexico income tax purposes. In no case shall a net operating loss established for the corporation reporting on a separate corporation basis be excluded from the base income of any other corporation or from the base income reported on any combined or consolidated return for any group of corporations except as a net operation loss carryover deduction to the extent allowable under Section 7-2A-2 NMSA 1978, and applicable federal limitations [1/7/92, 1/15/97; 3.4.1.11 NMAC - Rn & A, 3 NMAC 4.1.11, 12/14/00; Rp 03/23/2021]

#### **3.4.1.12 - FOREIGN SOURCE DIVIDENDS - PRIOR TO JANUARY 1, 2020:**

A. Foreign source dividends, as the term is used under federal law, received by a corporation reporting to New Mexico as a separate entity are wholly or partially excludable from the corporation's base income as follows:

(1) Seventy percent of the dividends included on lines 13 and 14, schedule C, federal form 1120 received from corporations owned less than twenty percent by the reporting corporation but only if those dividends would have been subject to the seventy percent deduction under 26 U.S.C. Section 243(a)(1) had the payor of the dividends been a domestic corporation.

(2) Eighty percent of the dividends included on lines 13 and 14, schedule C, federal form 1120 received from corporations owned twenty percent to eighty percent by the reporting corporation but only if those dividends would have been subject to the eighty percent deduction under 26 U.S.C. Section 243(c) had the payor of the dividends been a domestic corporation.

(3) One hundred percent of the dividends included on lines 13 and 14, schedule C, federal form 1120 received from corporations owned more than eighty percent by the reporting corporation but only if those dividends would have been subject to the one hundred percent deduction under 26 U.S.C. Section 243(a)(3) had the payor of the dividends been a domestic corporation.

B. The exclusion of foreign source dividends set forth in 3.4.1.12 NMAC applies only so long as New Mexico's method of taxing foreign source dividends is unconstitutional. 3.4.1 NMAC 4 C. Section 3.4.1.12 NMAC applies to taxable years beginning on or after January 1, 1997 but prior to January 1, 2020.

[5/31/98; 3.4.1.12 NMAC - Rn & A, 3 NMAC 4.1.12, 12/14/00; Rp 03/23/2021]

**3.4.1.13 FOREIGN SOURCE DIVIDENDS AFTER JANUARY 1, 2020:** For tax years beginning on or after January 1, 2020, "base income" under Section 7-2A-2 NMSA 1978 includes special deductions allowed under the Internal Revenue Code Sections 241 through 249

including the deduction for foreign source dividends under Section 245A.  
[3.4.1.13 NMAC - N, 3/23/2021]

**3.4.1.14 UNITARY BUSINESS:** The definition of a “unitary group” under Section 7-2A-2 NMA1978 rests on the underlying concept of “unitary business”, which reflects the general constitutional principles that have been set out by the U.S. Supreme Court and is meant to be applied consistent with those constitutional principals. See, in particular, *Mobil Oil Corp. v. Comm’r of Taxes of Vt.*, 455 U.S. 425, 438 (1980) where the court noted that a “separate accounting, while it purports to isolate portions of income received in various states, may fail to account for contributions to income resulting from functional integration, centralization of management, and economies of scale.” The court then characterized these as “factors of profitability” which “arise from the operation of the business as a whole.” See also, *MeadWestvaco Corp. v. Ill. Dep’t of Revenue*, 553 U.S. 16, 18 (2008). There, the court reiterated past holdings that the unitary business principle as articulated applies generally to entities, not assets, and that “an asset can be a part of a taxpayer’s unitary business even without a ‘unitary relationship’ between the ‘payor and payee.’” The court went on to review its precedent saying, “where the asset is another business, a unitary relationship’s ‘hallmarks’ are functional integration, centralized management, and economies of scale.” When a portion of a unitary business is conducted in New Mexico, the state has the constitutional authority to impose tax on that portion of the income derived from that business, provided that the tax is not discriminatory and is fairly apportioned. The primary factors indicating an economically interdependent business include centralized management, functional integration, and economies of scale, which may be demonstrated by substantial flows of value between components of the business as well as other similar indicia.

[3.4.1.14 NMAC - N, 3/23/2021]

#### **3.4.10.14 COMPUTATION OF BASE AND NET INCOME - APPLICABLE TO PERIODS BEGINNING ON OR AFTER JANUARY 1, 2020:**

A. Each corporate member of a unitary filing group computes its "base income" by determining the federal taxable income or federal net operating loss of the corporation on a separate corporate basis as though the member was a separate domestic entity for the taxable year, applying the Internal Revenue Code and applicable regulations. This base income is computed after deductions provided for in Sections 241 through 249 of the Internal Revenue Code but before any deduction for net operating losses. Then, before the base income of the unitary group is determined, the members make the following adjustments to federal taxable income or net operating loss:

(1) adding to that income:

(a) interest received on a state or local bond exempt under the Internal Revenue Code;

(b) the amount of any deduction claimed in calculating taxable income for all expenses and costs directly or indirectly paid, accrued or incurred to a captive real estate investment trust; and

(c) the amount of any deduction, other than for premiums, for amounts paid directly or indirectly to a commonly controlled entity that is exempt from corporate income tax pursuant to Section 7-2A-4 NMSA 1978; and

(2) subtracting from that income:

(a) income from obligations of the United States net of expenses incurred to earn that income;

(b) other amounts that the state is prohibited from taxing because of the laws or constitution of this state or the United States net of any related expenses;

(c) an amount equal to one hundred percent of the Subpart F income, as that term is defined in Section 952 of the Internal Revenue Code, as that section may be amended or renumbered, included in the income of the corporation; and

(d) an amount equal to one hundred percent of the income of the corporation under Section 951A of the Internal Revenue Code, after allowing the deduction provided in Section 250 of the Internal Revenue Code; and

(3) making other adjustments deemed necessary to properly reflect income of the unitary group, including attribution of income or expense related to unitary assets held by related corporations that are not part of the filing group.

B. The filing group's net income is computed by combining the member's base income, whether positive or negative, eliminating or deferring intercompany income and expense of the filing group members in a manner consistent with the consolidated filing requirements of the Internal Revenue Code and the Corporate Income and Franchise Tax Act; and without deducting any amount of net operating loss carryover.

[3.4.10.14 NMAC - N, 3/23/2021]

#### **3.4.10.15 NET OPERATING LOSSES OF FILING GROUPS - APPLICABLE TO TAXABLE YEARS BEGINNING ON OR AFTER JANUARY 1, 2020:**

A. In general, for taxable years beginning on or after January 1, 2020, New Mexico provides that net operating loss carryovers be computed on a post-apportioned basis and that the carryover be treated as an attribute of the unitary group, subject to the limitations under the Internal Revenue Code, including the consolidated filing regulations applied to the New Mexico unitary filing group as though it was the federal consolidated group.

B. A unitary filing group calculates its net operating loss carryover as follows:

(1) determining the amount of "grandfathered net operating loss carryover," if any, by:

(a) identifying the amount of net loss properly reported to New Mexico for taxable years beginning January 1, 2013 and prior to January 1, 2020 as part of a timely filed original return, or an amended return for those taxable years filed prior to January 1, 2020, that can be attributed to a corporation or corporations which are properly included in the taxpayer's return for the first taxable year beginning on or after January 1, 2020;

(b) reducing each loss identified by:

(i) adding back deductions for royalties or interest paid to any related corporation or group of corporations in computing the loss, but only to the extent that such adjustment would not create a net loss for that related corporation or group; and

(ii) subtracting net operating loss deductions taken prior to January 1, 2020 that would be properly charged against those losses consistent with the Internal Revenue Code and provisions of the Corporate Income and Franchise Tax Act applicable to the year of the deduction; and.

(c) apportioning any remaining loss to New Mexico using the apportionment factors that can properly be attributed to the corporation or corporations for the year of the net loss.

(2) Computing the "net operating loss carryover" as follows:

(a) add:

(i) the apportioned net loss properly reported on an original or amended tax return for taxable years beginning on or after January 1, 2020 by the taxpayer, including a filing group as properly determined under the Corporate Income and Franchise Tax Act;

(ii) the portion of an apportioned net loss properly reported to New Mexico for a taxable year beginning on or after January 1, 2020, on a separate year return, to the extent the taxpayer would have been entitled to include the portion of such apportioned net loss in the taxpayer's consolidated net operating loss carryforward under the Internal Revenue Code and consolidated filing rules if the taxpayer filed a consolidated federal return; and

(iii) the taxpayer's grandfathered net operating loss carryover; and.

(b) subtract:

(i) the amount of the net operating loss carryover attributed to an entity that has left the unitary filing group, computed in a manner consistent with the consolidated filing requirements of the Internal Revenue Code and applicable regulations, as if the taxpayer were filing a consolidated return; and

(ii) the amount of net operating loss deductions properly taken by the taxpayer.

C. For taxable years after January 1, 2020, a taxpayer may take a "net operating loss deduction" to the extent allowed under the Internal Revenue Code as of January 1, 2018 for the taxable year in which the deduction is taken, including the eighty percent limitation of Section 172(a) of the Internal Revenue Code as of January 1, 2018, calculated on the basis of the taxpayer's apportioned net income. In no case may the taxpayer's net operating loss deduction exceed eighty percent of the taxpayer's apportioned net income for the year in which the deductions taken.

[3.4.10.15 NMAC - N; 3/23/2021]

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**7-2A-3. IMPOSITION AND LEVY OF TAXES.--**

A. A tax to be known as the "corporate income tax" is imposed at the rate specified in the Corporate Income and Franchise Tax Act upon the taxable income of a corporation or group of corporations, in whatever jurisdiction organized or incorporated, that is engaged in the transaction of business in, into or from this state or deriving any income from any property or employment within this state.

B. A tax to be known as the "corporate franchise tax" is imposed in the amount specified in the Corporate Income and Franchise Tax Act upon every domestic corporation and upon every foreign corporation employed or engaged in the transaction of business in, into or from this state or deriving any income from any property or employment within this state and upon every domestic or foreign corporation, whether engaged in active business or not, but having or exercising its corporate franchise in this state.

(Laws 2019, Chapter 270, Section 17 – Applicable to taxable years beginning on or after January 1, 2020)

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**3.4.3.7 - DEFINITIONS**

A. Domestic corporation defined. For the purposes of the Corporate Income and Franchise Tax Act the term “domestic corporation” means any entity organized under the laws of New Mexico and subject to tax as a corporation under the provisions of the Internal Revenue Code. For the purposes of this subsection (3.4.3.7A NMAC), a partnership or similar entity, which is taxed as a corporation under the provisions of the Internal Revenue Code, is “organized under the laws of New Mexico” if the partnership agreement or similar instrument has been filed in the records of the county clerk of any county in New Mexico or if the entity maintains its principal place of business in New Mexico.

B. Foreign corporation defined. A “foreign corporation” is any entity which was organized under the provisions of the laws of any other state or foreign country and which is subject to tax as a corporation under the provisions of the Internal Revenue Code.  
[12/29/89, 1/7/92, 1/15/97; 3.4.3.7 NMAC - Rn & A, 3 NMAC 4.3.7, 12/14/00]

**3.15.100.8 - LIMITED LIABILITY COMPANIES**

A. If it is not required to file a return as a corporation for federal income tax purposes, a limited liability company formed in New Mexico pursuant to the Limited Liability Company Act or formed pursuant to a similar act of another state is not a domestic or foreign corporation and therefore is not subject to the franchise tax.

B. Any limited liability company which is required to file a return as a corporation for federal income tax purposes and exercises its franchise in New Mexico is a corporation subject to the franchise tax.

[12/28/94, 1/15/97; 3.15.100.8 NMAC - Rn, 3 NMAC 15.100.8, 12/14/00]

**3.4.10.16 OBLIGATION OF EXCLUDED CORPORATIONS TO FILE A RETURN:**

When a unitary group of corporations files a return, whether it is a worldwide, water's edge, or consolidated group return, if that return properly excludes one or more related corporations,

those corporations are not relieved of the obligation to file tax returns and pay any tax owed on a separate entity basis. These corporations may separately elect to file a worldwide or water's edge return as a unitary group only if that return will include all corporations that are properly a part of that unitary group. In computing base income and net income, the corporation or corporations that properly file in a separate return from related corporations will not eliminate or defer intercompany transactions with those related corporations.

[3.4.10.16 NMAC - N, 3/23/2021]

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**7-2A-4. EXEMPTIONS.--No corporate income or franchise tax shall be imposed upon:**

**A. insurance companies, reciprocal or inter-insurance exchanges which pay a premium tax to the state;**

**B. a trust organized or created in the United States and forming part of a stock bonus, pension or profit-sharing plan of an employer for the exclusive benefit of his employees or their beneficiaries, which trust is exempt from taxation under the provisions of the Internal Revenue Code; or**

**C. religious, educational, benevolent or other organizations not organized for profit which are exempt from income taxation under the Internal Revenue Code unless the organization receives income which is subject to federal income taxation as "unrelated business income" under the Internal Revenue Code, in which case the organization is subject to the corporate franchise tax, and the corporate income tax applies to the unrelated business income.**

**(Laws 1989, Chapter 111, Section 1)**

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**7-2A-5. CORPORATE INCOME TAX RATES.--The corporate income tax imposed on corporations by Section 7-2A-3 NMSA 1978 shall be:**

<b>If the taxable income is:</b>	<b>The tax shall be:</b>
<b>Not over \$500,000</b>	<b>4.8% of taxable income</b>
<b>Over \$500,000</b>	<b>\$24,000 plus 5.9% of excess over \$500,000.</b>

**(Laws 2019, Chapter 270, Section 18 – Applicable to taxable years beginning on or after January 1, 2020)**

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**7-2A-5.1. CORPORATE FRANCHISE TAX AMOUNT.--The corporate franchise tax amount imposed on a corporation by Section 7-2A-3 NMSA 1978 shall be fifty dollars (\$50.00) per taxable year or any fraction thereof.**

**(Laws 1992, Chapter 78, Section 3)**

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**3.15.100.7 – DEFINITIONS**

Corporation defined for franchise tax purposes. As used in Section 7-2A-5.1 NMSA 1978 the term "corporation" includes each and every domestic and foreign corporation or other organization having or exercising its corporate franchise in this state, whether active or not, or engaging in business in or deriving income from this state, and which either is required to file a corporate income tax return under the Internal Revenue Code or is a disregarded entity for federal income tax purposes. A "disregarded entity" is an entity with only one owner whose existence separate from the owner is disregarded for federal income tax purposes; see for example internal revenue service regulations 301.770-1-2 and 3.

[11/18/86, 9/16/88, 1/7/92, 1/15/97, 8/16/99; 3.15.100.7 NMAC - Rn & A, 3 NMAC 15.100.7, 12/14/00]

**3.15.100.9 - APPLICATION OF FRANCHISE TAX TO MEMBER OF A COMBINED OR CONSOLIDATED GROUP**

Each member of a combined group of unitary corporations and each member of a consolidated group of corporations shall be subject individually to the franchise tax imposed by Section 7-2A-5.1 NMSA 1978 even though a combined or consolidated state corporate income tax return is filed by the combined or consolidated group.

[11/18/86, 9/16/88, 1/7/92, 1/15/97; 3.15.100.9 NMAC - Rn & A, 3 NMAC 15.100.9, 12/14/00]



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**7-2A-6. TAX COMPUTATION--ALTERNATIVE METHOD.--**For those taxpayers who do not compute an amount upon which the federal income tax is calculated or who do not compute their federal income tax payable for the taxable year, the secretary shall prescribe such regulations or instructions as the secretary may deem necessary to enable them to compute their corporate income tax due.

**(Laws 1986, Chapter 20, Section 38)**

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**7-2A-7. TAXES APPLIED TO CORPORATIONS ON FEDERAL AREAS.**  
--To the extent permitted by law, no corporation shall be relieved from liability for corporate income tax or corporate franchise tax by reason of receiving income from transactions occurring or work or services performed within a federal area.

**(Laws 1986, Chapter 20, Section 39)**

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**\*\*\* REPEALED EFFECTIVE January 1, 2020  
BY LAWS 2019, CHAPTER 270, SECTION 58 \*\*\***

**7-2A-8. CREDIT--INCOME ALLOCATION AND APPORTIONMENT. --**

*A. Net income of any taxpayer having income that is taxable both within and without this state shall be apportioned and allocated as follows:*

*(1) except as otherwise provided in Paragraphs (2) through (4) of this subsection, income shall be allocated and apportioned as provided in the Uniform Division of Income for Tax Purposes Act;*

*(2) except for gambling winnings, nonbusiness income as defined in the Uniform Division of Income for Tax Purposes Act not otherwise allocated or apportioned under the Uniform Division of Income for Tax Purposes Act shall be equitably allocated or apportioned in accordance with instructions, rulings or regulations of the secretary;*

*(3) other deductions and exemptions allowable in computing federal taxable income and not specifically allocated in the Uniform Division of Income for Tax Purposes Act shall be equitably allocated or apportioned in accordance with instructions, rulings or regulations of the secretary; and*

*(4) gambling winnings that are nonbusiness income and arise from sources within this state shall be allocated to this state.*

*B. For the purposes of this section, "non-New Mexico percentage" means the percentage determined by dividing the difference between the taxpayer's net income and the sum of the amounts allocated or apportioned to New Mexico by that net income.*

*C. A taxpayer may claim a credit in an amount equal to the amount of tax determined to be due under Section 7-2A-5 NMSA 1978 multiplied by the non-New Mexico percentage.*

*(Laws 1996, Chapter 16, Section 2)*

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**3.4.10.7 – [RESERVED].**

[5/12/86, 9/16/88, 1/7/92, 1/15/97; 3.4.10.7 NMAC - Rn & A, 3 NMAC 4.10.7, 12/14/00; Repealed 03/23/2021]

**3.4.10.9 - [RESERVED].** [5/12/86, 9/16/88, 1/7/92, 1/15/97; 3.4.10.9 NMAC - Rn & A, 3 NMAC 4.10.9, 12/14/00; Repealed 03/23/2021]

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**7-2A-8.3. COMBINED AND CONSOLIDATED RETURNS.--**

A. Corporations that are part of a unitary group shall file a return properly reporting and paying tax on taxable income as a worldwide combined group unless they properly elect to report and pay tax on taxable income as a water's-edge or consolidated group, pursuant to department rules and instructions, on the first original return required to be filed for taxable years beginning on or after January 1, 2020. Corporations electing to file a consolidated return must file on that same basis for federal income tax purposes. Once a unitary or consolidated group has properly made an election to file as a water's-edge or consolidated group, the group and any of the group's members shall file a return on that basis for at least seven consecutive years unless the secretary grants permission otherwise. Corporations that are part of a unitary group filing a return are jointly and severally liable for the tax imposed pursuant to the Corporate Income and Franchise Tax Act on taxable income.

B. Corporations required to file a return as part of a filing group pursuant to this section may designate a member of the group to act as the principal corporation to file the return, make any elections, claim tax credits or refunds or perform any other act on behalf of the group with respect to the corporate income tax; provided that the members of the group remain jointly and severally liable for the taxes due pursuant to Subsection A of this section.

(Laws 2019, Chapter 270, Section 19 – Applicable to taxable years beginning January 1, 2020.)

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**3.4.10.8 - [RESERVED].**

[6/2/87, 9/16/88, 1/7/92, 7/15/96, 1/15/97; 3.4.10.8 NMAC - Rn & A, 3 NMAC 4.10.8, 12/14/00; Repealed 03/23/2021]

**3.4.10.11 COMBINED RETURNS - PRIOR TO JANUARY 1, 2020:**

A. Members of a combined group: A group of unitary corporations may include both domestic corporations and foreign corporations other than foreign corporations which are incorporated in a foreign country and are not engaged in trade or business in the United States during the taxable year. Such a group may file a state corporate income and franchise tax return using the combination of unitary corporations method if it otherwise meets the requirements of the Corporate Income and Franchise Tax Act and regulations thereunder.

B. Base income for members of a combined group.

(1) When a group of unitary corporations files a New Mexico corporate income and franchise tax return using the combination of unitary corporations method, the base income for the combined group of unitary corporations shall be determined by completing a simulated federal corporate income tax return. In completing the simulated federal return, only the income and expenses of the combined corporations will be allowed. The simulated return shall be prepared as if the combined group was filing a federal consolidated return including only the corporations in the unitary (combined) group.

(2) When completing the simulated federal return for New Mexico income tax purposes, all procedures and adjustments allowed by the Internal Revenue Code which apply to the filing of a federal consolidated return concerning the elimination of intercompany transactions or the sale or dissolution of one of the corporations within the federal consolidated group shall be allowed, but only for those transactions between members of the combined group of unitary corporations. No adjustments shall be made or allowed for transactions 3.4.10 NMAC 2 with any corporation that is not a member of the combined group of unitary corporations. Otherwise, all provisions of the Internal Revenue Code which would apply to the filing of a consolidated return shall apply to the completion of the simulated return for the combined group of unitary corporations.

C. This Regulation 3.4.10.11 NMAC is retroactively applicable to taxable years beginning on or after January 1, 1992 but before January 1, 2020. For returns for taxable years beginning on or after January 1, 2020, see 3.4.10.14 NMAC.

[1/7/92, 1/15/97; 3.4.10.11 NMAC - Rn, 3 NMAC 4.10.11, 12/14/00; Rp 03/23/2021]

**3.4.10.12 CONSOLIDATED FILING ELECTION:** When a group of corporations has properly made an election to file on a consolidated basis for New Mexico corporate income tax purposes, the filing group must include all of the members of the group properly included in the filed federal consolidated return. [3.4.10.12 NMAC - N, 3/23/2021]

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**\*\*\* REPEALED EFFECTIVE January 1, 2020  
BY LAWS 2019, CHAPTER 270, SECTION 58 \*\*\***

**7-2A-8.4. CONSOLIDATED RETURNS.--**

*A. Any corporation that is subject to taxation under the Corporate Income and Franchise Tax Act and that reports to the internal revenue service for federal income tax purposes its net income consolidated with the net income of one or more other corporations may elect to report to New Mexico on the same basis.*

*B. Once a corporation has been included in a consolidated return to New Mexico, the corporation shall not elect to file a New Mexico return under any other method without prior permission of the secretary, unless the change in reporting method is required or allowed under the Internal Revenue Code. Furthermore, such a corporation shall not elect nor shall the secretary grant it permission to separately account for income in New Mexico pursuant to Paragraph (4) of Subsection A of Section 7-2A-8 NMSA 1978.  
(Laws 1993, Chapter 309, Section 3)*

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\*\*\*This section is repealed, effective 1/1/96.\*\*\*

**7-2A-8.5. CORPORATE INCOME TAX CREDIT--GEOTHERMAL CAPITAL INVESTMENT.--**

**A. As used in this section:**

(1) "geothermal equipment" means equipment that is used for the utilization of geothermal energy and includes but is not limited to:

(a) geothermal production, low-temperature thermal, injection and disposal well completion equipment;

(b) energy transmission, storage and transfer equipment;

(c) electrical generation equipment;

(d) geothermal fluid treatment and disposal equipment;

and

(e) system control equipment used exclusively for the utilization of geothermal energy;

but "geothermal equipment" does not include groundwater heat pumps and other systems used to increase the delivery temperature of geothermal energy;

(2) "geothermal fluid" means naturally occurring steam or hot water which is at a temperature of at least 95° Fahrenheit in the natural state of free-flowing springs or pumped from wells; and

(3) "productive capital" means tangible personal property that is depreciable, has a useful life of at least three years and is used as an integral part of the geothermal equipment used to supply geothermal energy for commercial use or for the private use of the corporation.

**B. Any taxpayer engaged in the development of geothermal energy for use in New Mexico who files a New Mexico corporate income tax return may claim a tax credit against his corporate income tax liability in an amount equal to the percentage of the cost of productive capital indicated in the following schedule:**

**For taxable years beginning**

**on or after January 1**

**Percentage**

**1983**

**25%**

**1984**

**25%**

**1985**

**20%**

**1986**

**20%**

**1987**

**15%**

**1988**

**10%**

**1989**

**5%**

**1990**

**0%.**

**C. To qualify for the credit described in Subsection B of this section, the productive capital must be placed in service in New Mexico during the taxable year for which the credit is claimed.**

**D. The credit provided in Subsection B of this section may only be deducted from the taxpayer's corporate income tax liability.**

*E. Any portion of the maximum tax credit provided by this section which remains unused at the end of the taxpayer's taxable year may be carried forward for five consecutive years. However, in no case shall the total corporate income tax credits claimed under this section exceed sixty thousand dollars (\$60,000) on any single geothermal project.*  
*(Laws 1986, Chapter 20, Section 45)*

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**7-2A-8.6. CREDIT FOR PRESERVATION OF CULTURAL PROPERTY--CORPORATE INCOME TAX CREDIT.--**

**A. Tax credits for the preservation of cultural property may be claimed as follows:**

(1) to encourage the restoration, rehabilitation and preservation of cultural properties, a taxpayer that files a corporate income tax return and that is the owner of a cultural property listed on the official New Mexico register of cultural properties, with its consent, may claim a credit not to exceed twenty-five thousand dollars (\$25,000) in an amount equal to one-half of the cost of restoration, rehabilitation or preservation of the cultural property; or

(2) if a cultural property, whose owner may otherwise claim the credit set forth in Paragraph (1) of this subsection is also located within an arts and cultural district designated by the state or a municipality pursuant to the Arts and Cultural District Act, the owner of that cultural property may claim a credit not to exceed fifty thousand dollars (\$50,000), including any credit claimed pursuant to Paragraph (1) of this subsection, in an amount equal to one-half of the cost of restoration, rehabilitation or preservation of the cultural property.

**B. The taxpayer may claim the credit if:**

(1) it submitted a plan and specifications for restoration, rehabilitation or preservation to the committee and received approval from the committee for the plan and specifications prior to commencement of the restoration, rehabilitation or preservation;

(2) it received certification from the committee after completing the restoration, rehabilitation or preservation, or committee-approved phase, that it conformed to the plan and specifications and preserved and maintained those qualities of the property that made it eligible for inclusion in the official register; and

(3) the project is completed within twenty-four months of the date the project is approved by the committee in accordance with Paragraph (1) of this subsection.

**C. A taxpayer may claim the credit provided in this section for each taxable year in which preservation, restoration or rehabilitation is carried out. Claims for the credit provided in this section shall be limited to three consecutive years, and the maximum aggregate credit allowable shall not exceed twenty-five thousand dollars (\$25,000) if governed by Paragraph (1) of Subsection A of this section, or fifty thousand dollars (\$50,000) if governed by Paragraph (2) of Subsection A of this section, for any single restoration, rehabilitation or preservation project certified by the committee for any cultural property listed on the official New Mexico register. No single project may extend beyond a period of more than two years.**

**D. A taxpayer who otherwise qualifies and claims a credit on a restoration, rehabilitation or preservation project on property owned by a partnership of which the taxpayer is a member may claim a credit only in**



proportion to the taxpayer's interest in the partnership. The total credit claimed by all members of the partnership shall not exceed twenty-five thousand dollars (\$25,000) if governed by Paragraph (1) of Subsection A of this section, or fifty thousand dollars (\$50,000) if governed by Paragraph (2) of Subsection A of this section, in the aggregate for any single restoration, preservation or rehabilitation project for any cultural property listed on the official New Mexico register approved by the committee.

E. The credit provided in this section may only be deducted from the taxpayer's corporate income tax liability. Any portion of the maximum tax credit provided by this section that remains unused at the end of the taxpayer's taxable year may be carried forward for four consecutive years; provided, however, the total tax credits claimed under this section shall not exceed twenty-five thousand dollars (\$25,000) if governed by Paragraph (1) of Subsection A of this section, or fifty thousand dollars (\$50,000) if governed by Paragraph (2) of Subsection A of this section, for any single restoration, rehabilitation or preservation project for any cultural property listed on the official New Mexico register.

F. The historic preservation division shall promulgate regulations for the implementation of this section.

G. As used in this section:

(1) "committee" means the cultural properties review committee created in Section 18-6-4 NMSA 1978; and

(2) "historic preservation division" means the historic preservation division of the cultural affairs department created in Section 18-6-8 NMSA 1978.

(Laws 2007, Chapter 160, Section 15)

#### **3.4.14.8 - CREDIT FOR PRESERVATION OF CULTURAL PROPERTY**

A. Cultural property credit defined. The preservation of cultural property credit is a credit against a taxpayer's New Mexico corporate income tax due for amounts expended in the restoration, rehabilitation and preservation of cultural property owned by the taxpayer and listed on the official New Mexico register of cultural properties; see Part 4.10.9 NMAC. A corporation that files a New Mexico corporate income tax return may claim a credit against New Mexico corporate income tax due in an amount equal to one-half of the cost of the restoration, rehabilitation or preservation of the cultural property, not to exceed a maximum of twenty-five thousand dollars (\$25,000).

B. Filing requirements.

(1) The claim for the cultural property credit shall consist of a copy of the letter of certification, a copy of Form B, part 2 from the cultural properties review committee and a copy of the invoices or a statement from the contractor(s) showing the cost incurred for the year of the claim.

(2) The claim must be submitted with and attached to the New Mexico corporate income tax return for the year or years in which the restoration, rehabilitation or preservation is carried out.

C. Partnership claim for cultural property credit.

(1) A corporation which is a partner in a partnership or in a joint venture may claim its pro rata share of the cultural property credit against its New Mexico corporate income tax due. The total aggregate credit for all partners shall not exceed an amount equal to the lesser of one-half the cost of the restoration, rehabilitation or preservation or twenty-five thousand dollars (\$25,000) for a single restoration, rehabilitation or preservation project for any cultural property.

(2) A corporate partner shall claim the cultural property credit in the same manner as specified in Subsection 3.4.14.8B NMAC and shall, in addition, provide a schedule listing the names, addresses and social security numbers or federal employer identification numbers of all partners in the partnership or joint venture, the pro rata share of the credit of each partner and the New Mexico tax identification number under which the partnership or joint venture is filing CRS-1 forms.

[5/17/88, 9/16/88, 1/7/92, 1/15/97; 3.4.14.8 NMAC - Rn & A, 3 NMAC 4.14.8, 12/14/00]

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**7-2A-8.8. WELFARE-TO-WORK TAX CREDIT.--**

A. Any taxpayer who files a New Mexico corporate income tax return and who is entitled to claim the federal welfare-to-work credit provided by 26 U.S.C. Section 51A with respect to a state-qualified employee in a state-qualified job may take against the taxpayer's corporate income tax liability a tax credit equal to fifty percent of the amount of the welfare-to-work credit claimed and allowed under 26 U.S.C. Section 51A with respect to that employee in that job.

B. To be eligible for the credit provided by this section, a taxpayer must be in compliance with the following provisions:

(1) the hiring of any state-qualified employee shall not result in the displacement of any currently employed worker or position, including partial displacement such as a reduction in the hours of nonovertime work, wages or employment benefits, or in any infringement of the promotional opportunities of any currently employed individual;

(2) the hiring of any state-qualified employee shall not impair existing contracts for services or collective bargaining agreements, and no employment under the terms of this act shall be inconsistent with the terms of a collective bargaining agreement or involve the performance of duties covered under a collective bargaining agreement unless the employer and the labor organization concur in writing;

(3) a state-qualified employee may fill or perform the duties of an employment position only in a manner that is consistent with existing laws, personnel procedures and collective bargaining contracts;

(4) no state-qualified employee shall be employed or assigned:

(a) when any other individual is on layoff from the same or any substantially equivalent job;

(b) if the employer has terminated the employment of any regular employee or otherwise caused an involuntary reduction of its work force with the effect of filling the vacancy so created with a state-qualified employee; or

(c) to any position at a particular work site when there is an ongoing strike or lockout at that particular work site;

(5) state-qualified employees shall be paid a wage that is substantially like the wage paid for similar jobs with the employer with appropriate adjustments for experience and training but not less than the federal minimum hourly wage; and

(6) employers shall:

(a) maintain health, safety and working conditions not less than those of comparable jobs offered by the employer; and

(b) maintain standard and customary entry-level wages and benefits and apply historical and normal increases in wages and benefits appropriate for experience and training of the state-qualified employee.

C. For the purposes of this section:

(1) "high-unemployment county" means a county in which the

unemployment rate as reported by the labor department exceeds ten percent in six or more months of the calendar year preceding the year for which the tax credit provided by this section is claimed;

(2) "state-qualified employee" means a "long-term family assistance recipient", as that term is defined in 26 U.S.C. Section 51A(c), who resides in a high-unemployment county during the period of employment for which the welfare-to-work credit provided by 26 U.S.C. Section 51A applies with respect to that employee; and

(3) "state-qualified job" means a job established by the taxpayer that:

(a) when first occupied by a state-qualified employee results in the total number of the taxpayer's employees exceeding the average number of the taxpayer's employees during the taxpayer's preceding tax year; or

(b) was a position previously filled by a state-qualified employee and was vacant prior to the hiring of the new state-qualified employee in that position.

D. The labor department shall determine whether the employee is a state-qualified employee and whether the job is a state-qualified job and, if the employee is a state-qualified employee and the job is a state-qualified job, certify that fact to the employer. The taxpayer claiming the tax credit provided by this section shall provide a copy of the certification with respect to each employee for which the tax credit is claimed.

E. By July 1, 1998 and by January 31 of each subsequent year, the labor department shall certify to the taxation and revenue department the high-unemployment counties for the preceding calendar year.

F. The tax credit provided in this section may only be deducted from the taxpayer's corporate income tax liability. Any portion of the tax credit provided by this section that remains unused at the end of the taxpayer's taxable year may be carried forward for three consecutive taxable years.

(Laws 1998, Chapter 97, Section 3)

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**7-2A-8.9. TAX CREDIT--CERTAIN CONVEYANCES OF REAL PROPERTY.--**

A. There shall be allowed as a credit against the tax liability imposed by the Corporate Income and Franchise Tax Act an amount equal to fifty percent of the fair market value of land or interest in land that is conveyed for the purpose of open space, natural resource or biodiversity conservation, agricultural preservation or watershed or historic preservation as an unconditional donation in perpetuity by the landowner or taxpayer to a public or private conservation agency eligible to hold the land and interests therein for conservation or preservation purposes. The fair market value of qualified donations made pursuant to this section shall be substantiated by a "qualified appraisal" prepared by a "qualified appraiser", as those terms are defined under applicable federal laws and regulations governing charitable contributions.

B. The amount of the credit that may be claimed by a taxpayer shall not exceed one hundred thousand dollars (\$100,000) for a conveyance made prior to January 1, 2008 and shall not exceed two hundred fifty thousand dollars (\$250,000) for a conveyance made on or after that date. In addition, in a taxable year the credit used may not exceed the amount of corporate income tax otherwise due. A portion of the credit that is unused in a taxable year may be carried over for a maximum of twenty consecutive taxable years following the taxable year in which the credit originated until fully expended. A taxpayer may claim only one tax credit per taxable year.

C. Qualified donations shall include the conveyance in perpetuity of a fee interest in real property or a less-than-fee interest in real property, such as a conservation restriction, preservation restriction, agricultural preservation restriction or watershed preservation restriction, pursuant to the Land Use Easement Act; provided that the less-than-fee interest qualifies as a charitable contribution deduction under Section 170(h) of the Internal Revenue Code. Dedications of land for open space for the purpose of fulfilling density requirements to obtain subdivision or building permits shall not be considered as qualified donations pursuant to the Land Conservation Incentives Act.

D. Qualified donations shall be eligible for the tax credit if the donations are made to the state of New Mexico, a political subdivision thereof or a charitable organization described in Section 501(c)(3) of the Internal Revenue Code and that meets the requirements of Section 170(h)(3) of that code.

E. To be eligible for treatment as qualified donations under this section, land or interests in lands must be certified by the secretary of energy, minerals and natural resources as fulfilling the purposes as set forth in Section 5-9-2 NMSA 1978. The use and protection of the lands, or interests therein, for open space, natural area protection, biodiversity habitat conservation, land preservation, agricultural preservation, historic

preservation or similar use or purpose of the property shall be assured in perpetuity.

F. A taxpayer may apply for certification of eligibility for the tax credit provided by this section from the energy, minerals and natural resources department. If the energy, minerals and natural resources department determines that the application meets the requirements of this section and that the property conveyed will not adversely affect the property rights of contiguous landowners, it shall issue a certificate of eligibility to the taxpayer, which shall include a calculation of the maximum amount of tax credit for which the taxpayer would be eligible. The energy, minerals and natural resources department may issue rules governing the procedure for administering the provisions of this subsection.

G. To receive a credit pursuant to this section, a person shall apply to the taxation and revenue department on forms and in the manner prescribed by the department. The application shall include a certificate of eligibility issued by the energy, minerals and natural resources department pursuant to Subsection F of this section. If all of the requirements of this section have been complied with, the taxation and revenue department shall issue to the applicant a document granting the tax credit. The document shall be numbered for identification and declare its date of issuance and the amount of the tax credit allowed for the qualified donation made pursuant to this section.

H. The tax credit represented by a document issued pursuant to Subsection G of this section for a conveyance made on or after January 1, 2008, or an increment of that tax credit, may be sold, exchanged or otherwise transferred, and may be carried forward for a period of twenty taxable years following the taxable year in which the credit originated until fully expended. A tax credit or increment of a tax credit may only be transferred once. The credit may be transferred to any taxpayer. A taxpayer to whom a credit has been transferred may use the credit for the taxable year in which the transfer occurred and unused amounts may be carried forward to succeeding taxable years, but in no event may the transferred credit be used more than twenty years after it was originally issued.

I. A tax credit issued pursuant to this section shall be transferred through a qualified intermediary. The qualified intermediary shall, by means of a sworn notarized statement, notify the taxation and revenue department of the transfer and of the date of the transfer within ten days of the transfer. Credits shall only be transferred in increments of ten thousand dollars (\$10,000) or more. The qualified intermediary shall keep an account of the credits and have the authority to issue sub-numbers registered with the taxation and revenue department and traceable to the original credit.

J. If a charitable deduction is claimed on the taxpayer's federal income tax for any contribution for which the credit provided by this section is claimed, the taxpayer's itemized deductions for New Mexico income tax shall be reduced by the amount of the deduction for the contribution in order to determine the New Mexico taxable income of the taxpayer.

**K. For the purposes of this section:**

**(1) "qualified intermediary" does not include a person who has been previously convicted of a felony, who has had a professional license revoked, who is engaged in the practice defined in Section 61-28B-3 NMSA 1978 and who is identified in Section 61-29-2 NMSA 1978, and does not include any entity owned wholly or in part or employing any of the foregoing persons; and**

**(2) "taxpayer" means a citizen or resident of the United States, a domestic partnership, a limited liability company, a domestic corporation, an estate, including a foreign estate, or a trust.**

**(Laws 2007, Chapter 335, Section 2)**

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**3.13.20.7 - DEFINITIONS**

A. "Applicant" means a taxpayer who on or after January 1, 2004, donates or partially donates (or for purposes of 3.13.20.8 NMAC plans to donate or partially donate) through a bargain sale for a conservation or preservation purpose, a perpetual less-than-fee interest in land that appears to qualify as a charitable contribution under 26 U.S.C. section 170(h) and its implementing regulations or a fee interest in land, which is subject to a perpetual conservation easement, to a public or private conservation agency. If more than one taxpayer owns an interest in the land or interest in land that is the donated or partially donated, they shall be considered one applicant, but the application shall include the names and addresses of all taxpayers that own an interest in the donated land or interest in land.

B. "Appraisal bureau" means the taxation and revenue department, property tax division, appraisal bureau.

C. "Bargain sale" means a sale where the taxpayer is paid less than the fair market value of the land or interest in land.

D. "Building envelope" means a designated area within a conservation easement that is identified in the deed of conservation easement that contains existing structures and activities or will contain future structures and activities that are for the grantor's continued use of the property but that are prohibited elsewhere within the conservation easement.

E. "Committee" means the committee established pursuant to the Natural Lands Protection Act, NMSA 1978, Sections 75-5-1 *et seq.*

F. "Conservation or preservation purpose" means open space, natural area preservation, land conservation or preservation, natural resource or biodiversity conservation including habitat conservation, forest land preservation, agricultural preservation, watershed preservation or historic or cultural property preservation, or similar uses or purposes such as protection of land for outdoor recreation purposes. The resources or areas contained in the donation must be significant or important.

G. "Cultural property" means a structure, place, site or object having historic, archaeological, scientific, architectural or other cultural significance.

H. "Development approach" means a method of appraising undeveloped land having a highest and best use for subdivision into lots. This approach consists of estimating a final sale price for the total number of lots into which the property could best be divided and then deducting all development costs, including the developer's anticipated profit. The remaining sum, the residual, represents the raw land's market value.

I. "Governmental body" means the state of New Mexico or any of its political subdivisions.

J. "Interest in land" means a right in real property, including access, improvement, water right, fee simple interest, easement, land use easement, mineral right, remainder interest or other interest in or right in real property that complies with the requirements of 26 U.S.C. section 170(h)(2) and its implementing regulations, or any pertinent successor of 26 U.S.C. section 170(h)(2).

K. "Land" means real property, including rights of way, easements, privileges, water rights and all other rights or interests connected with real property.

L. "Less-than-fee interest" means an interest in land that is less than the entire property or all of the rights in the property or a non-possessory interest in land that imposes a limitation or affirmative obligation such as a conservation, land use or preservation restriction or easement.

M. "National register of historic places" means the register that the United States secretary of the interior maintains of districts, sites, buildings, structures and objects significant in American history, architecture, archaeology, engineering or culture.

N. "Pass-through entity" means a business association other than a sole proprietorship; an estate or trust; 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; or a partnership that is organized as an investment partnership in which the partners' income is derived solely from interest, dividends and sales of securities.

O. "Public or private conservation agency" means a governmental body or a private non-profit charitable corporation or trust authorized to do business in New Mexico that is organized and operated for natural resources, land or historic conservation purposes and that has tax-exempt status as a public charity under 26 U.S.C. section 501(c)(3) and meets the requirements of 26 U.S.C. section 170(h)(3) and its implementing regulations, and has the power to acquire, hold or maintain land or interests in land.

P. "Qualified appraisal" means a qualified appraisal as defined in 26 C.F.R. section 1.170A-13(c)(3) or subsequent amendments and does not use the development approach as the sole means of determining fair market value. The appraisal for a conservation easement or restriction shall state whether the donation increases the value of other property the donor or a related person owns. In accordance with 26 C.F.R. section 1.170A-14(h)(3)(i), if the donation increases the value of other property the donor or a related person owns the appraisal shall reflect the increase by reducing the value of the conservation contribution by the amount of the increase in value to the other property, whether or not the other property is contiguous with the donated property.

Q. "Qualified appraiser" means a qualified appraiser as defined in 26 C.F.R. section 1.170A-13(c)(5) or subsequent amendments and who is a certified general real estate appraiser.

R. "Qualified intermediary" means any person who has not been previously convicted of a felony, who has not had a professional license revoked, who is not engaged in the practice of public accountancy as defined in NMSA 1978, Section 61-28B-3 or who is not identified in the NMSA 1978, Section 61-29-2, which governs real estate brokers and salespersons, or who is not an entity owned wholly or in part by or employing a person who has been previously convicted of a felony, who has had a professional license revoked, who is engaged in the practice of public accountancy as defined in NMSA 1978, Section 61-28B-3 or who is identified in NMSA 1978, Section 61-29-2.



S. "Taxpayer" means a United States citizen or resident, a United States domestic partnership, a limited liability company, a United States domestic corporation, an estate, including a foreign estate, or a trust. A non-profit may be a taxpayer if organized as a United States domestic partnership, a limited liability company, a United States domestic corporation or a trust. A governmental body or other governmental entity is not a taxpayer.

T. "Tax filer" means a New Mexico taxpayer who files a New Mexico tax return claiming a tax credit pursuant to the Land Conservation Incentives Act together with valid numbered documentation from the taxation and revenue department or valid sub-numbered documentation from a qualified intermediary.

U. "Secretary" means the secretary of energy, minerals and natural resources department or his or her designee.

[3.13.20.7 NMAC - Rp, 3.13.20.7 NMAC, 6-16-2008; A, 12-30-2010]

### **3.13.20.8 - GENERAL PROVISIONS**

A. Only an applicant may apply for a land conservation incentives tax credit.

B. A taxpayer shall be listed as an owner on the deed conveying the land or interest in land to be eligible for the land conservation incentives tax credit (see Subsection N of 3.13.20.8 NMAC for use of a land conservation tax credit issued to a pass-through entity).

C. A taxpayer is not eligible for a land conservation incentives tax credit if they are or have been a subsidiary, partner, manager, member, shareholder or beneficiary of a domestic partnership, limited liability company, domestic corporation or pass-through entity that owns or has owned the donated land or interest in land in the five years preceding the date that the applicant conveyed the land or interest in land.

D. Qualified donations include a conveyance, on or after January 1, 2004, in perpetuity for a conservation or preservation purpose of a less-than-fee interest in land that appears to qualify as a charitable contribution under 26 U.S.C. section 170(h) and its implementing regulations or a fee interest in land.

E. Dedications of land for open space for the purpose of fulfilling density requirements to obtain subdivision or building permits do not qualify for the land conservation incentives tax credit.

F. For a donation of a fee interest in land or less-than-fee interest in land that the applicant conveys, the total amount of the land conservation incentives tax credit for the donation for which an applicant applies shall not exceed 50 percent of the fair market value of the land or interest in land that the applicant donated in perpetuity, regardless of the value of the land or interest in land donated or the number of taxpayers that own an interest in the donated property. An applicant shall only apply for one land conservation incentives tax credit per taxpayer per taxable year.

G. For donations made prior to January 1, 2008, a taxpayer that owns an interest in the donated land or interest in land may receive a land conservation incentives tax credit worth the lesser of \$100,000 or the taxpayer's proportionate share, as determined by the taxpayer's ownership interest in the donated land or interest in land, of 50 percent of the donated land's or interest in land's fair market value. For donations made on or after January 1, 2008, a taxpayer that owns an interest in the donated land or interest in land may receive a land conservation incentives tax credit worth the lesser of \$250,000 or the taxpayer's proportionate share, as determined by the taxpayer's ownership interest in the donated land or interest in land, of 50 percent of the donated land or interest in land's fair market value. No matter the number of

taxpayers that the donated land or interest in land has, the total land conservation incentives tax credit all taxpayers receive for the donated land or interest in land cannot exceed 50 percent of the donated land's or interest in land's fair market value. Therefore, if the applicant conveyed the donation on or after January 1, 2008, and there are 10 taxpayers that have an equal interest in donated land or interest in land that is worth \$2,000,000, each taxpayer's land conservation incentives tax credit would be limited to \$100,000.

H. For donations conveyed prior to January 1, 2008, a husband and wife who both own a recorded interest in the donated land or interest in land, as opposed to one spouse not being named on the deed but having a community property interest, may each receive a land conservation incentives tax credit worth the lesser of \$100,000 or his or her proportionate share, as determined by his or her ownership interest in the donated land or interest in land, of 50 percent of the donated land's or interest in land's fair market value. For donations made on or after January 1, 2008, a husband and wife who both own a recorded interest in a donated land or interest in land, as opposed to one spouse not being named on the deed but having a community property interest, may each receive a land conservation incentives tax credit worth the lesser of \$250,000 or his or her proportionate share, as determined by his or her ownership interest in the donated land or interest in land, of 50 percent of the donated land's or interest in land's fair market value.

I. The land conservation incentives tax credit originates in the year the applicant conveys the donation, which shall be determined by the date that the deed is recorded with the county clerk where the land or interest in land is located. Pursuant to NMSA 1978, Section 7-1-26, an applicant who files a tax return may amend his or her tax return and claim the land conservation incentives tax credit for three calendar years after the applicant has paid the tax. An applicant may apply for the land conservation incentives tax credit and then amend the applicant's tax return to the year the applicant conveyed the donation as long as the applicant receives approval of the land conservation incentives tax credit and files the amendment within the three year period provided in NMSA 1978, Section 7-1-26. The applicant may carry over portions of the land conservation incentives tax credit that are unused in prior taxable years for a maximum of 20 consecutive years following the taxable year in which the applicant donated the land or interest in land until fully expended.

J. If the applicant donated a portion of the land or interest in land's value, but received payment for the remaining fair market value of the land or interest in land, the applicant may claim only the land conservation incentives tax credit on that portion of the value that the applicant donated.

K. An applicant claiming a tax credit pursuant to the Land Conservation Incentives Act shall not claim a credit pursuant to a similar law for costs related to the same donation.

L. A tax filer may claim the land conservation incentives tax credit against the tax liability that the Income Tax Act or the Corporate Income and Franchise Tax Act impose.

M. The amount of the land conservation incentives tax credit a tax filer uses in a taxable year may not exceed the amount of the individual income or corporate income tax otherwise due.

N. A land conservation incentives tax credit that a pass-through tax entity claims may be used either by the pass-through tax entity if it is the tax filer on behalf of the pass-through tax entity or by the member, manager, partner, shareholder or beneficiary, as applicable, in proportion to the interest in the pass-through tax entity if the income, deductions and tax liability pass through to the member, manager, partner, shareholder or beneficiary. Either (1) the

pass-through tax entity or (2) the member, manager, partner, shareholder or beneficiary, but not both (1) and (2) may claim the land conservation incentives tax credit for the same donation.  
[3.13.20.8 NMAC - Rp, 3.13.20.8 NMAC, 6-16-2008]

### **3.13.20.9 - ASSESSMENT APPLICATION**

A. An applicant who plans to apply for a land conservation incentives tax credit shall apply for an assessment by the energy, minerals and natural resources department of the donation the applicant made or proposes to make for a conservation or preservation purpose of a fee interest in land or a less-than-fee interest in land. An applicant may submit the assessment application to the energy, minerals and natural resources department either prior to conveying the fee interest in land or less-than-fee interest in land or after conveying the fee interest in land or less-than-fee interest in land. The applicant does not need to submit an appraisal with the assessment application package.

B. An applicant may obtain an assessment application form from the energy, minerals and natural resources department.

C. An applicant shall submit the assessment application package, which shall include one signed, completed paper original and either eight paper copies or eight electronic copies, to the energy, minerals and natural resources department. If submitting electronic copies, the applicant may submit the eight copies of the assessment application package on a compact or digital video disc or other electronic medium such as a USB flash drive. Any photographs submitted shall be in color.

D. The assessment application package shall consist of an assessment application form that contains the applicant's name, address, telephone number, e-mail address if available and signature, with the following required attachments:

- (1) a donation assessment report that includes:
  - (a) a detailed description of the donation or proposed donation including:
    - (i) whether the donation or proposed donation is a fee interest in land or a less-than-fee interest in land;
    - (ii) if the donation or proposed donation is a fee interest in land, in order to ensure that the conservation or preservation purpose is protected in perpetuity, a description of who holds or will hold a conservation easement that the applicant has placed or will place on the land and assurance that the conservation easement will contain a provision that the conservation restrictions run with the land in perpetuity and that any reserved use shall be consistent with the conservation or preservation purpose and that separate donees will hold the fee interest and conservation easement;
    - (iii) the donation or proposed donation's conservation or preservation purpose and how the donation or proposed donation protects that purpose in perpetuity;
    - (iv) significant natural or cultural resources present on the property; and
    - (v) a description of any water rights associated with the property and whether the conservation easement or deed requires or will require any water rights associated with the property to remain with the property;
  - (b) the current property characteristics and condition with clear maps of appropriate scale to illustrate relevant details, and showing the property's location and boundaries including a survey plat if available, directions to the property, topography, relation to other properties applicant owns that are within a 10 mile radius of the property, and relation to

adjacent land uses and ownership (*i.e.* federal, tribal, state, private, etc.) and other properties whose conservation or preservation purposes are protected in perpetuity that are adjacent to the property or within a five mile radius of the property;

(c) the size of the property in acres;

(d) a description of all structures existing on the property;

(e) if a donation or proposed donation is a less-than-fee interest, a description of any building envelopes including their size and exact location and the size of the buildings allowed within each building envelope;

(f) if a donation or proposed donation is a less-than-fee interest, a description of the reserved rights and permitted activities that the applicant has or plans to retain or a copy of the completed or draft conservation easement;

(g) if a conservation or preservation purpose is for the preservation of a historically important land area, documentation that the donation meets the requirements of 26 C.F.R. section 1.170A-14(d)(5); historically important land areas include an independently significant land area that meets the national register criteria for evaluation in 36 C.F.R section 60.4, a land area (including related historic resources) within a registered historic district including a building on the land area that can reasonably be considered as contributing to the district's significance and a land area adjacent to a property listed individually in the national register of historic places where the land area's physical or environmental features contribute to the property's historic or cultural integrity;

(h) if a conservation or preservation purpose is for the preservation of a certified historic structure, which means buildings, structures or land areas, documentation that the structure is listed in the national register of historic places or is located in a registered historic district and is certified by the secretary of the interior to the secretary of treasury as being of historic significance to the district and that the donation meets the requirements of 26 C.F.R. section 1.170A-14(d)(5);

(i) if a conservation or preservation purpose is for the preservation of land areas for outdoor recreation by or for the education of the general public, a detailed description of how the conservation easement or deed will provide for the general public's substantial and regular use;

(j) if a conservation or preservation purpose is for the protection of a relatively natural area, a detailed description of the vegetative cover, wildlife use, how the property contributes to the functioning of the larger regional ecosystem and watershed and how the conservation easement will protect the soil, native plant cover and wildlife use of the property;

(k) if a conservation or preservation purpose is for the preservation of open space pursuant to a clearly delineated federal, state or local government policy, documentation of such policy and a detailed description identifying the significant public benefit;

(l) if a conservation or preservation purpose is for the preservation of open space that is not pursuant to a clearly delineated federal, state or local government policy, a detailed description of how the conservation easement or deed will provide for the general public's scenic enjoyment and identifying the significant public benefit;

(m) if a conservation or preservation purpose is for the protection of agricultural land, a detailed description of the property's crop or animal production potential, documentation that the portion of the property claimed as agricultural land is currently subject to the special method of valuation of land used primarily for agricultural purposes as described in

NMSA 1978, Section 7-36-20 (*i.e.*, classified as either irrigated agricultural land, dryland agricultural land or grazing land under Paragraph (2) of Subsection F of 3.6.5.27 NMAC as shown on the statement of value issued by the county in which the land is located) and a description of how the conservation easement or deed will provide for agricultural use and the continued use of any water rights;

(n) the results of and a description of the physical inspection of the property the donee or proposed donee conducted for any indications of potentially hazardous materials or activities that have or may result in environmental contamination such as landfills, leaking petroleum storage tanks, hazardous material containers or spills, polychlorinated biphenyl containing equipment, asbestos insulation and abandoned mineral mining or milling facilities or other past activities using hazardous materials and the results of and a description of the interview the donee or proposed donee conducted with the landowner concerning the landowner's knowledge of such potentially hazardous materials or activities;

(2) if the donee or proposed donee or landowner identified the potential for potentially hazardous materials or activities in the donation assessment report, a phase I environmental site assessment of the property and a phase II environmental site assessment if recommended by the phase I environmental assessment;

(3) a copy of any formal donor or donee plan for management or stewardship of the property's conservation or preservation values;

(4) signed authorization from the applicant that allows personnel from the energy, minerals and natural resources department or members of the committee to enter upon the land or interest in land to view the conservation or preservation values conveyed or to be conveyed by the applicant for the purposes of reviewing the assessment application, upon the personnel or committee members providing the applicant with 48 hours prior notice; and

(5) a report from the public or private land conservation agency that has accepted or plans to accept the donation that provides the following:

(a) the number of fee lands held for conservation or preservation purposes or conservation easements that the agency holds in New Mexico;

(b) the number of acres of each fee land held for conservation or preservation purposes or conservation easement that the agency holds in New Mexico;

(c) the names of board members if the agency is a private nonprofit organization or the names of elected or appointed officials if the organization is a public entity; and

(d) a signed statement from the public or private conservation agency describing its commitment to protect the donation's conservation or preservation purposes, its resources to provide stewardship of and management for fee lands or to enforce conservation easement restrictions and, if a conservation easement, its resources and policies to annually monitor the conservation easement.

E. The secretary reviews the assessment applications in consultation with the committee. The secretary initiates consultation by sending the assessment application package to the committee members for review and comment or by calling a meeting of the committee. The secretary shall accept assessment application packages on a rolling basis or not fewer than three times per year spaced throughout the year, the deadlines for which shall be published in advance on the energy, minerals and natural resources department's website. The committee shall meet not fewer than three times per year (within approximately 45 days after a set deadline for assessment application package submittals or otherwise spaced throughout the year) to consider

timely and complete assessment applications unless no assessment applications are currently pending or the limited volume of the assessment application enables the secretary to consult with the committee without the need for a formal meeting. The secretary, in consultation with the committee, shall assess the donation or proposed donation, using the factors in 3.13.20.13 NMAC, to determine if the donation or proposed donation is for a conservation or preservation purpose and will protect the conservation or preservation purpose in perpetuity and that the resources or areas contained in the donation or proposed donation are significant or important.

F. If the secretary finds that the donation as conveyed or proposed is for a conservation or preservation purpose and will protect the conservation or preservation purpose in perpetuity and that the resources or areas contained in the donation or proposed donation are significant or important, the secretary shall notify the applicant by letter that the applicant may file an application for certification of eligibility as provided in 3.13.20.10 NMAC. Approval of the application for certification of eligibility is contingent upon the applicant meeting the requirements in 3.13.20.10 NMAC, the completed conservation easement or deed accurately reflecting the donation or proposed donation described in the donation assessment report and the appraisal bureau issuing a favorable recommendation of the appraisal. In order to apply for certification of eligibility, the applicant may not change a proposed donation, donation assessment report or, if a proposed donation, the public or private conservation agency to which the applicant is making the donation after the applicant submits the assessment application. If the applicant makes such changes, the applicant shall submit a new assessment application and must receive a favorable finding from the secretary before applying for certification of eligibility.

G. The secretary shall reject an assessment application that is not complete or correct. If the secretary rejects the assessment application because the assessment application is incomplete or incorrect or finds that the donation or proposed donation is not for a conservation or preservation purpose, the donation or proposed donation may not or will not protect the conservation or preservation purpose in perpetuity or that the resources or areas contained in the donation or proposed donation are not significant or important, the applicant may not submit an application for certification of eligibility for the land conservation incentives tax credit. The secretary's letter shall state the specific reasons why the secretary found the assessment application incomplete or incorrect, that the donation or proposed donation is not for a conservation or preservation purpose, that the donation or proposed donation may not or will not protect the conservation or preservation purpose in perpetuity or that the resources or areas contained in the donation or proposed donation are not significant or important.

H. If the secretary rejects the assessment application because the assessment application is incomplete or incorrect; or although the assessment application is complete and correct and the donation or proposed donation is for a conservation or preservation purpose the resources or areas contained in the donation or proposed donation are not significant or important; or the donation or proposed donation may not or will not protect the conservation or preservation purpose in perpetuity, the applicant may resubmit the application package with the complete or correct information or additional information that addresses the requirement that the resources or areas contained in the donation or proposed donation be significant or important or that the donation or proposed donation protect the conservation or preservation purpose in perpetuity. The secretary shall place the resubmitted assessment application in the review schedule as if it were a new assessment application.

[3.13.20.9 NMAC - N, 6-16-2008; A, 12-30-2010]

### **3.13.20.10 - APPLICATION FOR CERTIFICATION OF ELIGIBILITY**

A. An applicant who submitted an assessment application to the energy, minerals and natural resources department and received a finding from the secretary that the donation or proposed donation is for a conservation or preservation purpose and will protect that conservation or preservation purpose in perpetuity and that the resources or areas contained in the donation or proposed donation are significant or important may apply for certification of eligibility for a land conservation incentives tax credit. An applicant may not apply for certification of eligibility for a land conservation incentives tax credit without first submitting an assessment application pursuant to 3.13.20.9 NMAC and receiving a favorable finding from the secretary. The applicant shall certify in writing that the applicant has not changed the donation or proposed donation, donation assessment report or the public or private conservation agency to which the applicant conveyed or planned to convey the donation since the applicant submitted the assessment application. If the applicant has made such changes the applicant shall submit a new assessment application pursuant to 3.13.20.9 NMAC and receive a favorable finding from the secretary before applying for certification of eligibility.

B. The applicant may obtain a land conservation incentives tax credit certification of eligibility application form from the energy, minerals and natural resources department.

C. An applicant shall submit the certification of eligibility application package, which shall include one signed, completed paper original and two paper copies of the application package, to the energy, minerals and natural resources department. Any photographs shall be provided in color. The applicant shall certify that the information and documents included in the application for certification of eligibility are true and correct.

D. The completed application for certification of eligibility shall contain the applicant's name, address, telephone number, e-mail address if available, signature, federal employer identification number or social security number, and, if available, the New Mexico combined reporting system (CRS) identification number as well as the certifications, information and attachments required by Subsections E through I of 3.13.20.10 NMAC, as applicable. If more than one taxpayer owns the donated land or interest in land, the application shall include each taxpayer's federal employer identification number or social security number and, if available, New Mexico CRS identification number. The applicant shall indicate on the application whether the applicant is a United States citizen or resident, a United States domestic partnership, a limited liability company, a United States domestic corporation, an estate or a trust. If more than one taxpayer owns the donated land or interest in land, the application shall include each taxpayer's status.

E. The application shall state whether the applicant made the donation as part of a bargain sale. If the applicant made the donation as part of a bargain sale, the application shall include the amount the applicant received from the sale of the land or interest in land.

F. The applicant shall certify on the certification of eligibility application that none of the taxpayers listed on the certification of eligibility application is or was a subsidiary, partner, manager, member, shareholder or beneficiary of a domestic partnership, limited liability company, domestic corporation or pass-through entity that owns or has owned the land or interest in land in the five years preceding the date that the applicant conveyed the land or interest in land. If an individual and a domestic partnership, limited liability company, domestic corporation or pass-through entity are listed as owners on the deed conveying the land or interest in land, the applicant shall certify on the certification of eligibility application that the individual

is not a partner, manager, member, shareholder or beneficiary of the domestic partnership, limited liability company, domestic corporation or pass-through-entity. If more than one domestic partnership, limited liability company, domestic corporation or pass-through entity are listed as an owner on the deed conveying the land or interest in land, the applicant shall certify on the certification of eligibility application that none of the named entities is a subsidiary, partner, manager, member, shareholder or beneficiary of any of the other entities listed on the deed.

G. The certification of eligibility application package shall consist of a land conservation incentives tax credit application form, with the following required attachments as well as any attachments required in Subsection H of 3.13.20.10 NMAC for fee donations or Subsection I of 3.13.20.10 NMAC for less-than-fee donations:

(1) a copy of the letter from the secretary stating that after reviewing the applicant's assessment application that the donation or proposed donation is for a conservation or preservation purpose and will protect the conservation or preservation purpose in perpetuity and that the resources or areas contained in the donation or proposed donation are significant or important;

(2) written certification signed by the applicant that the applicant has not changed the donation or proposed donation, donation assessment report or the public or private conservation agency to which the applicant conveyed or planned to convey the donation since the applicant submitted the assessment application;

(3) a copy of the conservation easement or deed recorded with the county clerk of the county or counties where the land is located, which reflects the ownership interest of each individual or entity conveying the land or interest in land;

(4) a qualified appraisal of the land or interest in land donated that a qualified appraiser prepared showing the fair market value of the land or interest in land with a statement from the appraiser that prepared the appraisal certifying that the appraisal is a qualified appraisal and that the appraiser is a qualified appraiser; the appraisal shall not be made more than 60 days prior to the date of the donation; the appraisal shall either be a self-contained appraisal or, if a summary appraisal, shall include a copy of the appraiser's work file;

(5) if the donation is to a private conservation agency, a copy of that agency's 501(c)(3) certification from the United States internal revenue service;

(6) a signed statement from the applicant certifying that the applicant did not donate the land or interest in land for open space for the purpose of fulfilling density requirements to obtain subdivision or building permits;

(7) if the applicant owns other properties within a 10 mile radius of the donated land or interest in land, a legal description of those properties;

(8) signed authorization from the applicant that authorizes personnel from the appraisal bureau to contact the appraiser that prepared the appraisal for the donation;

(9) a title opinion certifying that the applicant owned the donated land or interest in land as of the date of the donation or a title insurance policy for the land or interest in land showing that the applicant owned the donated land or interest in land as of the date of the donation;

(10) if the applicant owns the mineral interest under the land or the interest in land, a title opinion certifying such ownership, other documentation establishing such ownership, or a report from a professional geologist that the probability of surface mining occurring on such property is so remote as to be negligible, and a provision in the conservation easement or deed



that prohibits any extraction or removal of minerals by any surface mining method; methods of mining that have limited, localized negative effects on the land and that are not irretrievably destructive of significant conservation interests may be allowed if the secretary finds that the methods will have limited, localized negative effects and are not irretrievably destructive of significant conservation interests; and

(11) if the ownership of the surface estate and mineral interest has been separate and remains separate, a report, satisfactory to the secretary, from a professional geologist that the probability of surface mining occurring on such property is so remote as to be negligible; the secretary may have a geologist that the state employs review the report; if the secretary finds the report unsatisfactory the secretary's letter denying certification of eligibility shall state the reasons that the report is unsatisfactory.

H. If the applicant donated the land in fee, the applicant shall also include the following attachments with the application package:

(1) a statement from the public or private conservation agency to which the applicant donated the land, that the applicant donated the land for conservation or preservation purposes and the public or private conservation agency will hold the land for such purposes;

(2) a copy of United States internal revenue service form 8283 for the donation signed by the public or private conservation agency and the appraiser who prepared the appraisal for the donation; and

(3) to ensure the land will be used in perpetuity for the purposes of the donation, documentation in the form of a conservation easement that complies with 26 U.S.C. section 170(h) and its implementing regulations placed on the land that contains a provision in the conservation easement that the conservation restrictions run with the land in perpetuity and that any reserved use shall be consistent with the conservation or preservation purpose (separate donees must hold the fee and conservation easement).

I. If the applicant donated a less-than-fee interest in land, the applicant shall also include the following attachments with the application package:

(1) a copy of United States internal revenue service form 8283 for that donation signed by the public or private conservation agency and the appraiser who prepared the appraisal for the donation;

(2) a provision in the conservation easement that identifies the donation's conservation or preservation purpose or purposes;

(3) a provision in the conservation easement that provides that the conveyance of the less-than-fee interest does not and will not adversely affect contiguous landowners' existing property rights;

(4) if a conservation or preservation purpose is for the conservation or preservation of land areas for outdoor recreation by or for the education of the general public, a provision in the conservation easement that provides for the general public's substantial and regular use;

(5) if a conservation or preservation purpose is for the protection of a relatively natural habitat, a provision in the conservation easement that describes the habitat;

(6) if a conservation or preservation purpose is for the preservation of open space pursuant to a clearly delineated federal, state or local government policy, a provision in the conservation easement identifying such policy and identifying the significant public benefit;

(7) if a conservation or preservation purpose is for the preservation of open space that is not pursuant to a clearly delineated federal, state or local government policy, a provision

in the conservation easement stating how the easement or restriction provides for the general public's scenic enjoyment and identifies the significant public benefit;

(8) if a conservation or preservation purpose is for the property's continued use for irrigated agriculture, a provision that provides that sufficient water rights will remain with the property;

(9) a provision in the conservation easement that the conservation restrictions run with the land in perpetuity;

(10) a provision in the conservation easement that any reserved use shall be consistent with the conservation or preservation purpose;

(11) a provision in the conservation easement that prohibits the donee from subsequently transferring the interest in land unless the transfer is to another public or private conservation agency and the donee, as a condition of the transfer, requires that the conservation or preservation purposes for which the donation was originally intended continue to be carried out;

(12) a provision in the conservation easement that provides that the donation of the less-than-fee interest is a property right, immediately vested in the donee, and provides that the less-than-fee interest has a fair market value that is at least equal to the proportionate value that the conservation restriction at the time of the donation bears to the property as a whole at that time; the provision shall further provide that if subsequent unexpected changes in the conditions surrounding the property make impossible or impractical the property's continued use for conservation or preservation purposes and judicial proceedings extinguish the easement or restrictions then the donee is entitled to a portion of the proceeds from the property's subsequent sale, exchange or involuntary conversion at least equal to the perpetual conservation restriction's proportionate value;

(13) if the applicant reserves rights that if exercised may impair the conservation interests associated with the property, documentation sufficient to establish the property's condition at the time of the donation and a provision in the conservation easement whereby the applicant agrees to notify the public or private conservation agency receiving the donation before exercising any reserved right that may adversely impact the conservation or preservation purposes; and

(14) if the interest in land is subject to a mortgage, a subordination agreement, recorded with the county clerk of the county or counties where the land that is located, from the mortgage holder that the mortgage holder subordinates the mortgage holder's rights in the interest in land to the right of the public or private conservation agency to enforce the conservation or preservation purposes of the donation in perpetuity.

[3.13.20.10 NMAC - Rp, 3.13.20.9 NMAC, 6-16-2008; A, 12-30-2010]

### **3.13.20.11 - CERTIFICATION OF ELIGIBILITY APPLICATION REVIEW PROCESS AND CERTIFICATION OF ELIGIBLE DONATION**

A. Authority to Review. The secretary reviews certification of eligibility applications.

B. Appraisal Review. Upon receiving the certification of eligibility application, the secretary requests that the taxation and revenue department review the appraisal and forwards the appraisal to the appraisal bureau for review. The appraisal bureau shall review the appraisal and advise the secretary whether the appraisal meets the requirements of 3.13.20 NMAC including whether the appraisal complies with the uniform standards of professional appraisal practice and

whether the appraiser used proper methodology and reached a reasonable conclusion concerning value.

(1) If the appraisal bureau determines that the appraisal meets the requirements of 3.13.20 NMAC including whether the appraisal complies with the uniform standards of professional appraisal practice and that the appraiser used proper methodology and reached a reasonable conclusion concerning value the appraisal bureau shall issue a final review of the appraisal to the energy, minerals and natural resources department.

(2) If the appraisal bureau determines that that the appraisal does not meet the requirements of 3.13.20 NMAC, the uniform standards of professional appraisal practice or that the appraiser did not use proper methodology or reach a reasonable conclusion concerning value the appraisal bureau shall send a preliminary review of the appraisal to the energy, minerals and natural resources department identifying the reasons for the appraisal bureau's determination.

(3) The appraisal bureau's review does not preclude further audit by the taxation and revenue department or the United States internal revenue service.

C. Rejection of Certification of Eligibility Applications. The secretary shall reject a certification of eligibility application if

(1) the certification of eligibility application is incomplete or incorrect;

(2) the applicant changed the donation or proposed donation, donation assessment report or the public or private conservation agency to which the applicant conveyed or planned to convey the donation since the applicant submitted the assessment application;

(3) the donation does not meet the requirements of 3.13.20.8 NMAC or 3.13.20.10 NMAC;

(4) the completed conservation easement or deed does not accurately reflect the donation the applicant described in the applicant's assessment application; or

(5) the appraisal bureau provides a final unfavorable recommendation of the appraisal.

D. Notice of Cause to Reject. If the secretary determines that there is cause to reject the certification of eligibility application, the secretary shall issue notice to the applicant pursuant to 3.13.20.12 NMAC.

E. Resubmittal of Rejected Certification of Eligibility Applications.

(1) If the secretary rejects the certification of eligibility application because the certification of eligibility application was incomplete or incorrect; does not meet the requirements of 3.13.20.8 NMAC or 3.13.20.10 NMAC; the filed conservation easement or deed does not accurately reflect the donation the applicant described in the applicant's assessment application; or the appraisal bureau provides a final unfavorable recommendation of the appraisal, the applicant may resubmit the application package for the rejected certification of eligibility application with the complete or correct information or additional information that addresses the requirements the donation does not meet. The secretary shall place the resubmitted certification of eligibility application in the review schedule as if it were a new certification of eligibility application.

(2) If the secretary rejects the certification of eligibility application because the applicant changed the donation or proposed donation, donation assessment report or the public or private conservation agency to which the applicant conveyed or planned to convey the donation since the applicant submitted the assessment application, the applicant shall submit a new assessment application pursuant to 3.13.20.8 NMAC.

F. Approval of Certification of Eligibility Applications.

(1) The secretary approves the certification of eligibility application if the secretary finds

(a) the donation of land or interest in land meets the requirements of 3.13.20.8 NMAC or 3.13.20.10 NMAC;

(b) the secretary issued a favorable finding on the applicant's assessment application and the applicant has not changed the donation or proposed donation, donation assessment report or the public or private conservation agency to which the applicant conveyed or planned to convey the donation since the applicant submitted the assessment application;

(c) the completed conservation easement or deed accurately reflects the donation the applicant described in the applicant's assessment application; the donation does not adversely affect contiguous landowners' property rights; and

(d) the appraisal meets the requirements of 3.13.20 NMAC including compliance with the uniform standards of professional appraisal practice and that the appraiser used proper methodology and reached a reasonable conclusion concerning value.

(2) The secretary's approval is given by the issuance of a letter to the applicant. This letter shall certify that the donation of land or interest in land includes the conveyance in perpetuity, on or after January 1, 2004, for a conservation or preservation purpose of a fee interest in land or a less-than-fee interest in land that meets the requirements of the Land Conservation Incentives Act; NMSA 1978, Sections 7-2-18.10 or 7-2A-8.9; and 3.13.20 NMAC, and include a calculation of the maximum amount of the land conservation incentives tax credit for which each taxpayer is eligible.

[3.13.20.11 NMAC - Rp, 3.13.20.10 NMAC, 6-16-2008; A, 12-30-2010]

### **3.13.20.12 - NOTICE TO APPLICANT OF PROPOSED REJECTION OF CERTIFICATION OF ELIGIBILITY APPLICATION; APPLICANT RESPONSE; FINAL ACTION**

A. If after review of a certification of eligibility application, the secretary determines that there is cause to reject the certification of eligibility application, the secretary shall issue a letter advising the applicant that the secretary is proposing to reject the certification of eligibility application and stating the specific reasons for the proposed rejection.

B. The applicant shall have 45 days after the issuance of the letter to respond in writing to the reasons for the proposed rejection and offer information or documents that demonstrates that the application meets the requirements.

C. If the secretary's proposed rejection involves an unfavorable preliminary review of the appraisal from the appraisal bureau and the applicant responds to the preliminary review of the appraisal within 45 days of the issuance of the letter, the energy, minerals and natural resources department shall forward the applicant's response to the appraisal bureau for review of the response and issuance of the appraisal bureau's final review of the appraisal. If the applicant does not respond to the preliminary review of the appraisal within 45 days of the issuance of the letter, the energy, minerals and natural resources department shall notify the appraisal bureau that the energy, minerals and natural resources department did not receive a response to the preliminary review of the appraisal from the applicant. After reviewing the applicant's response, if any, the appraisal bureau shall issue a final review of the appraisal and advise the secretary whether the appraisal meets the requirements of 3.13.20 NMAC including whether the appraisal complies with the uniform standards of professional appraisal practice and whether the appraiser used proper methodology and reached a reasonable conclusion concerning value.

D. After reviewing the applicant's response, if any, and the appraisal bureau's final review of the appraisal the secretary shall determine whether the information or documents the applicant has supplied satisfactorily address and resolve the specific reasons for the proposed rejection and issue a letter either rejecting the certification of eligibility application or approving the certification of eligibility application. If the secretary determines that the applicant's response does not satisfactorily resolve the reasons for the rejection or if the appraisal bureau has issued a final unfavorable recommendation of the appraisal, the secretary shall issue a letter denying the certification of eligibility application. The secretary's letter shall state the specific reasons why the secretary rejected the certification of eligibility application.  
[3.13.20.12 NMAC - N, 6-16-2008; A, 12-30-2010]

### **3.13.20.13 - FACTORS IN DETERMINING SUITABILITY FOR CERTIFICATION OF ELIGIBILITY**

A. The donation shall meet the following three criteria for the secretary to consider the donation for certification eligibility:

- (1) the land or interest in land fits one or more of the descriptions of purposes in Subsection D of 3.13.20.7 NMAC;
- (2) the recipient is a public or private conservation agency with the ability and commitment to monitor and ensure the grantor's compliance with the conservation easement or provide stewardship of the fee land, as applicable; and
- (3) the donation provides for the protection in perpetuity of the conservation or preservation purposes for which the applicant donated the land or interest in land through a conservation easement.

B. In determining an application's suitability for certification of eligibility, the secretary considers several factors including the following:

- (1) property size;
- (2) property condition or potential;
- (3) presence of significant natural or cultural resources;
- (4) property's location relative to other lands protected for conservation or preservation purposes;
- (5) current and future management and use;
- (6) contribution to local, regional or state conservation or preservation objectives;
- (7) terms of the conservation easement or deed;
- (8) qualifications and stewardship capacity of the public or private conservation agency that holds the fee or conservation easement; and
- (9) other factors affecting the property's long-term protection and viability.

C. The secretary also considers the criteria listed in the following table in determining whether the resources or areas contained in the donation are significant or important: These criteria relate to the property's overall condition and viability as well as the compatibility of future management and uses and surrounding land uses for maintenance of conservation values.

<b>Ranking</b>	<b>Site Condition</b>	<b>Development</b>	<b>Uses</b>	<b>Surrounding s</b>	<b>Stewardship or Monitoring</b>
Favorable	Site is of uniformly	Additional development	Allowed uses of the	Surrounding land uses are	If a fee donation, the recipient has

	good condition and sufficient size to maintain the conservation or preservation purposes, assuming other favorable factors such as good potential for restoration if needed	of the property is specifically prohibited or additional development that is allowed is consistent with the conservation or preservation purposes	property are consistent with the conservation or preservation purposes	entirely compatible with site conservation or preservation purposes, or site serves as a connection between other conservation lands or provides significant or important open space	sufficient resources as well as a formal plan to provide stewardship for the conservation or preservation purposes. If a less-than-fee donation the recipient has sufficient resources to monitor and ensure the grantor's compliance with the conservation's easement's terms.
Marginal	Site is of minimum size and condition to maintain the conservation or preservation purposes, assuming other favorable factors	Additional development allowed that may impair the conservation or preservation purposes	Allowed uses of the property may be incompatible for long-term maintenance of the conservation or preservation purposes	Surrounding lands uses are not consistent with site conservation or preservation purposes, and site does not serve as a connection between other conservation lands or provide significant or important open space, but surrounding land uses do not seriously compromise site integrity	If a fee donation, the recipient has no formal plan and marginal capacity to provide stewardship of the conservation or preservation purposes. If a less-than-fee donation, the recipient has marginal resources to monitor and ensure the grantor's compliance with the conservation's easement's terms.
Unfavorable	Maintenance	Additional	Allowed uses	Surrounding	If a fee donation,

of conservation or preservation values is severely compromised by the site's size, configuration, location or condition	development allowed that is inconsistent with the conservation or preservation purposes	are clearly incompatible with the long-term maintenance of the conservation or preservation purposes	land uses are clearly incompatible with site conservation or preservation and threaten site integrity and the site does not serve as a connection between other conservation lands or provide significant or important open space	the recipient has no plan or resources to provide stewardship of the conservation or preservation purposes. If a less-than-fee donation, the recipient has no or limited resources to monitor and ensure the grantor's compliance with the conservation's easement's terms.
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D. The secretary evaluates each application in the context of the property's unique geographic setting and characteristics, but the secretary will not apply rigid standards relating to tract size or other factors. Instead, the secretary evaluates the donation's overall contribution to the indicated conservation or preservation purpose as well as the probability the purposes will be supported in perpetuity.

[3.13.20.13 NMAC - N, 6-16-2008]

### **3.13.20.14 - FILING REQUIREMENTS**

A. After obtaining a certificate of eligibility from the energy, minerals and natural resources department, the applicant shall apply for the land conservation incentives tax credit with the taxation and revenue department on a form the taxation and revenue department develops. The applicant shall attach the certificate of eligibility received from the secretary.

B. If the applicant complies with all the requirements in NMSA 1978, Section 7-2-18.10 or Section 7-2-8.9 and has received the certificate of eligibility from the secretary, the taxation and revenue department shall issue a document granting the land conservation incentives tax credit, which is numbered for identification and includes its date of issuance and the amount of the land conservation incentives tax credit allowed.

C. A tax filer shall use a claim form the taxation and revenue department develops to apply the land conservation incentives tax credit to the tax filer's income taxes. A tax filer shall submit the claim form with its income tax return.

D. A tax filer who has both a carryover credit and a new credit derived from a qualified donation in the taxable year for which the tax filer is filing the return shall first apply the amount of carryover credit against the income tax liability. A tax filer may apply one or more tax credits against the liability in a given year; provided however, that the tax credits

applied shall not exceed the liability for that year. If the amount of liability exceeds the carryover credit, then the tax filer may apply the current year credit against the liability.

E. If an applicant claims a charitable deduction on the applicant's federal income tax for a contribution for which the applicant also claims a tax credit pursuant to the Land Conservation Incentives Act, the applicant's itemized deduction for New Mexico income tax shall be reduced by the deduction amount for the contribution to determine the applicant's New Mexico taxable income.

[3.13.20.14 NMAC - Rp, 3.13.20.11 NMAC, 6-16-2008; A, 12-30-2010]

### **3.13.20.15 - TRANSFER OF THE LAND CONSERVATION INCENTIVES TAX CREDIT**

A. An applicant may sell, exchange or otherwise transfer an approved land conservation incentives tax credit, represented by the document that the taxation and revenue department issues, for a conveyance made on or after January 1, 2008. A land conservation incentives tax credit or increment of a land conservation incentives tax credit may only be transferred once. An applicant may transfer the applicant's land conservation incentives tax credit to any tax filer.

B. A tax filer to whom an applicant has transferred a land conservation incentives tax credit may use the land conservation incentives tax credit in the year that the transfer occurred and carry forward unused amounts to succeeding taxable years, but may not use the land conservation incentives tax credit for more than 20 years after the taxation and revenue department originally issued the land conservation incentives tax credit. In order to use the land conservation incentives tax credit for that taxable year, the transfer of the land conservation incentives tax credit must occur on or before December 31 of that taxable year, if the individual or entity who will use the land conservation incentives tax credit has a taxable year of January 1 to December 31, or on or before the end of the taxable year if the individual or entity has a taxable year that is not January 1 to December 31.

C. An applicant may only transfer a land conservation incentives tax credit in increments of \$10,000 or more.

D. An applicant shall use a qualified intermediary to transfer a land conservation incentives tax credit. The qualified intermediary shall notify the taxation and revenue department of the transfer and the date of the transfer on a taxation and revenue department-developed form within 10 days following the transfer. The qualified intermediary shall keep an account of the land conservation incentives tax credit transferred.

E. A qualified intermediary may issue sub-numbers registered with and obtained from the taxation and revenue department.

F. If an individual who owns an interest in the donated property dies prior to selling, exchanging or otherwise transferring the land conservation incentives tax credit, the donor's estate may sell, exchange or otherwise transfer the land conservation incentives tax credit.

[3.13.20.15 NMAC - N, 6-16-2008; A, 12-30-2010]

### **3.13.20.16 - TRANSITION PROVISIONS**

3.13.20 NMAC, effective on June 16, 2008, shall apply to those applications for a land conservation incentives tax credit, an applicant submits on or after June 16, 2008 even if the applicant conveyed the donation prior to that date.

[3.13.20.16 NMAC - N, 6-16-2008]



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**7-2A-9. TAXPAYER RETURNS--PAYMENT OF TAX.--**

A. Every corporation deriving income from any business transaction, property or employment within this state, that is not exempt from tax under the Corporate Income and Franchise Tax Act and that is required by the laws of the United States to file a federal income tax return shall file a complete tax return with the department in form and content as prescribed by the secretary. Except as provided in Subsection C of this section, a corporation that is required by the provisions of the Corporate Income and Franchise Tax Act to file a return or pay a tax shall, on or before the due date of the corporation's federal corporate income tax return for the taxable year, file the return and pay the tax imposed for that year.

B. Every domestic or foreign corporation that is not exempt from tax under the Corporate Income and Franchise Tax Act, that is employed or engaged in the transaction of business in, into or from this state or that derives any income from property or employment within this state and every domestic or foreign corporation, regardless of whether it is engaged in active business, that has or exercises its corporate franchise in this state and that is not exempt from tax under the Corporate Income and Franchise Tax Act shall file a return in the form and content as prescribed by the secretary and pay the tax levied pursuant to Subsection B of Section 7-2A-3 NMSA 1978 in the amount for each corporation as specified in Section 7-2A-5.1 NMSA 1978. Returns and payment of tax for corporate franchise tax for a taxable year shall be filed and paid on the date specified in Subsection A or C of this section for payment of corporate income tax for the preceding taxable year.

C. A corporation that is required by the provisions of the Corporate Income and Franchise Tax Act to file a return or pay a tax and that is approved by the department to use electronic media for filing and paying taxes shall, if using electronic media for filing and paying taxes, file the return and pay the tax levied for that taxable year on or before the last day of the month in which the corporation's federal corporate income tax return is originally due for the taxable year. The due date provided by this subsection does not apply to corporations that have received a filing extension from New Mexico or an extension from the federal internal revenue service for the same taxable year. (Laws 2016, Chapter 15, Section 2; Applicable to taxable years beginning on or after January 1, 2016)

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**7-2A-9.1. ESTIMATED TAX DUE--PAYMENT OF ESTIMATED TAX--  
PENALTY--EXEMPTION.--**

A. Every taxpayer shall pay estimated corporate income tax to the state of New Mexico during its taxable year if its tax after applicable credits is five thousand dollars (\$5,000) or more in the current taxable year. A taxpayer to which this section applies shall calculate estimated tax by one of the following methods:

(1) estimating the amount of tax due, net of any credits, for the current taxable year, provided that the estimated amount is at least eighty percent of the amount determined to be due for the taxable year;

(2) using as the estimate an amount equal to one hundred percent of the tax due for the previous taxable year, if the previous taxable year was a full twelve-month year;

(3) using as the estimate an amount equal to one hundred ten percent of the tax due for the taxable year immediately preceding the previous taxable year, if the taxable year immediately preceding the previous taxable year was a full twelve-month year and the return for the previous taxable year has not been filed and the extended due date for filing that return has not occurred at the time the first installment is due for the taxable year; or

(4) estimating the amount of tax due, net of any credits, for each fiscal quarter of the current taxable year, provided that the estimated amount is at least eighty percent of the amount determined to be due for that quarter.

B. If Subsection A of this section applies, the amount of estimated tax shall be paid in installments as provided in this subsection. Twenty-five percent of the estimated tax calculated under Paragraph (1), (2) or (3) of Subsection A of this section or one hundred percent of the estimated tax calculated under Paragraph (4) of Subsection A of this section is due on or before the following dates: the fifteenth day of the fourth month of the taxable year, the fifteenth day of the sixth month of the taxable year, the fifteenth day of the ninth month of the taxable year and the fifteenth day of the twelfth month of the taxable year.

Application of this subsection to a taxable year that is a fractional part of a year shall be determined by regulation of the secretary.

C. Every taxpayer to which Subsection A of this section applies that fails to pay the estimated tax when due or that makes estimated tax payments during the taxable year that are less than the lesser of eighty percent of the income tax imposed on the taxpayer under the Corporate Income and Franchise Tax Act or the amount required by Paragraph (2), (3) or (4) of Subsection A of this section shall be subject to the interest and penalty provisions of Sections 7-1-67 and 7-1-69 NMSA 1978 on the underpayment.

D. For purposes of this section, the amount of underpayment shall be the excess of the amount of the installment that would be required to be paid if the estimated tax were equal to eighty percent of the tax shown on the return for the taxable year or the amount required by Paragraph (2), (3) or

(4) of Subsection A of this section or, if no return was filed, eighty percent of the tax for the taxable year for which the estimated tax is due less the amount, if any, of the installment paid on or before the last date prescribed for payment.

E. For purposes of this section, the period of underpayment shall run from the date the installment was required to be paid to whichever of the following dates is earlier:

(1) the fifteenth day of the third month following the end of the taxable year; or

(2) with respect to any portion of the underpayment, the date on which such portion is paid. For the purposes of this paragraph, a payment of estimated tax on any installment date shall be applied as a payment of any previous underpayment only to the extent such payment exceeds the amount of the installment determined under Subsection D of this section due on such installment date.

F. For the purposes of this section, the amount of tax deducted and withheld with respect to a taxpayer under the Withholding Tax Act or the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act shall be deemed a payment of estimated tax. An equal amount of the amount of withheld tax shall be deemed paid on each due date for the applicable taxable year unless the taxpayer establishes the dates on which all amounts were actually withheld, in which case the amounts withheld shall be deemed payments of estimated tax on the dates on which the amounts were actually withheld. The taxpayer may apply the provisions of this subsection separately to amounts withheld under the Withholding Tax Act or the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act. Amounts of tax paid by taxpayers pursuant to Section 7-3A-3 NMSA 1978 shall not be deemed a payment of estimated tax.

(Laws 2010, Chapter 53, Section 2)

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#### **3.4.9.9 - PREVIOUS TAXABLE YEAR DEFINED**

For purposes of Section 7-2A-9 NMSA 1978 the term “previous taxable year” shall not mean any period of time less than a full twelve month or 52/53 week year for calendar or fiscal year filers.

[11/18/86, 9/16/88, 7/15/96; 3.4.9.9 NMAC - Rn & A, 3 NMAC 4.9.9, 12/14/00]

#### **3.4.9.10 - RESERVED**

[1/15/98; 3.4.9.10 NMAC - Rn, 3 NMAC 4.9.10, 12/14/00; Repealed, 9/15/08]

#### **3.4.9.11 - ESTIMATED TAX; APPLICATION TO FRACTIONAL YEARS**

Unless the secretary prescribes instructions requiring estimated payments with respect to fractional years, Section 7-2A-9.1 NMSA 1978 does not apply to fractional years.

[3.4.9.11 NMAC, N - 12/14/00]

#### **3.4.9.12 - WHEN WITHHELD TAX NOT CONSIDERED ESTIMATED TAX**

Payment pursuant to the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act by an oil and gas proceeds remitter or pass-through entity of withholding tax required to be withheld from payments to a remittee or an owner relate to the remittee's or owner's income tax or corporate income tax liability, not to the remitter's or pass-through entity's. Accordingly, when a remitter or pass-through entity is a corporation that also has an obligation to pay estimated tax pursuant to Section 7-2A-9.1 NMSA 1978, the corporation may not credit the amounts it withheld under Section 7-3A-3 NMSA 1978 from payments the corporation owes to remittees or owners against the corporation's own estimated tax liability. See 3.3.5.17 NMAC for treatment of withholding owed by remitter or pass-through entity but paid by remittee or owner pursuant to an agreement.

[3.4.9.12 NMAC - N, 12/15/10]

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**7-2A-9.2. LIMITATION ON CLAIMING OF CREDITS AND TAX REBATES.--**A credit or tax rebate provided in the Corporate Income and Franchise Tax Act that is claimed shall be disallowed if the claim for the credit or tax rebate was first made after the end of the third calendar year following the calendar year in which the return upon which the credit or rebate was first claimable was initially due.  
**(Laws 1990, Chapter 23, Section 2)**

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**3.4.14.11 TAX CREDITS; APPLICATION TO UNITARY GROUPS:** With respect to taxable years beginning on or after January 1, 2020, when any corporation properly files as part of a worldwide, water's edge or consolidated return, if that corporation has qualified for and continues to hold an unused amount of New Mexico tax credit that it could properly take against its tax liability in a particular taxable year, then that unused amount of tax credit may be applied against the tax liability of the unitary group in accordance with the law applicable to that credit. Any other limitations on the credit apply in the same manner to the unitary group as they would apply to the corporation that holds the credit.  
[3.4.14.11 NMAC - N, 03/23/2021]

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**7-2A-10. INFORMATION RETURNS.--**

A. Pursuant to regulation, the secretary may require any person doing business in this state and making payments in the course of business to another person to file information returns with the department.

B. The provisions of this section also apply to payments made by the state of New Mexico, by the governing bodies of any political subdivision of the state of New Mexico, by any agency, department or instrumentality of the state or of any political subdivision thereof and, to the extent permitted by law or pursuant to any agreement entered into by the secretary, to payments made by any other governmental body or by an agency, department or instrumentality thereof.

**(Laws 1986, Chapter 20, Section 48)**

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**3.4.10.13 - INFORMATION RETURNS; RENTS AND ROYALTIES**

A. Persons paying rents and royalties from oil and gas properties located in New Mexico, who are required to file internal revenue service information return Form 1099-MISC on such payments, shall file the rent and royalty information with the department in the manner stated below.

(1) Persons paying such rents and royalties on properties located in New Mexico are required to segregate the New Mexico rents and royalties paid from the rents and royalties paid everywhere and report only those rents and royalties from New Mexico properties to the department. The department will accept the information on magnetic media in lieu of paper returns. The magnetic media must comply with the internal revenue service reporting requirements for filing information returns.

(2) A person who has entered into an agreement with the internal revenue service identified as "Consent For Internal Revenue Service To Release Tax Information" will be deemed to have complied with the filing requirements of this 3.4.10.13 NMAC.

B. The due date for information returns required to be filed with the department shall be June 15 of each year following the close of the previous calendar year.

C. This section is applicable to taxable years beginning on or after January 1, 1983. [1/25/83, 9/16/88, 1/7/92, 1/15/97; 3.4.10.13 NMAC - Rn & A, 3 NMAC 4.10.13, 12/14/00; Rp 03/23/2021]

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**7-2A-11. ACCOUNTING METHODS.--**A taxpayer shall use the same accounting methods for reporting income for corporate income tax purposes as are used in reporting income for federal income tax purposes.  
(Laws 1986, Chapter 20, Section 49)

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**7-2A-12. FISCAL YEARS PERMITTED.--**Any corporation which files income tax returns under the Internal Revenue Code on the basis of a fiscal year shall report income under the Corporate Income and Franchise Tax Act on the same basis.  
(Laws 1986, Chapter 20, Section 50)

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**7-2A-13. ADMINISTRATION.--**The Corporate Income and Franchise Tax Act shall be administered pursuant to the provisions of the Tax Administration Act.  
(Laws 1986, Chapter 20, Section 51)

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**7-2A-14. CORPORATE-SUPPORTED CHILD CARE--CREDITS ALLOWED. --**

A. A taxpayer that pays for child care services in New Mexico for dependent children of an employee of the taxpayer during the employee's hours of employment may claim a credit against the corporate income tax imposed pursuant to the Corporate Income and Franchise Tax Act in an amount equal to thirty percent of the total expenses, net of any reimbursements, for child care services incurred and paid by the taxpayer in the taxable year.

B. A taxpayer that operates a child care facility in New Mexico used primarily by the dependent children of the taxpayer's employees may also claim a credit against the corporate income tax imposed pursuant to the Corporate Income and Franchise Tax Act in an amount equal to thirty percent of the net cost of operating the child care facility for the taxable year. If two or more taxpayers share in the cost of operating a child care facility primarily for the dependent children of the taxpayers' employees, each taxpayer shall be allowed a credit in relation to the taxpayer's share of the cost of operating the child care facility. Each taxpayer's share of the tax credit shall be determined by dividing the employer's share of the net cost of operating the child care facility by the number of children served and multiplying the result by the number of the taxpayer's employees' children served. The credit allowed pursuant to this subsection may be taken only if the child care facility is operated under the authority of a license issued pursuant to the Public Health Act and is operated without profit by the taxpayer. For the purposes of this section, the term "net cost" means the cost of operating a child care facility less any amounts collected as fees for use of the facility, any federal tax credits with respect to the facility or its operation and any other payment or reimbursement from any other source other than the credit provided by this section.

C. For the purposes of this section, "dependent children" means children under twelve years of age.

D. The credits provided for by Subsections A and B of this section may only be deducted from the taxpayer's corporate income tax liability for the taxable year in which the expenditures occurred. The credit may not exceed thirty thousand dollars (\$30,000) in any taxable year. If the credit amount exceeds the corporate income tax liability, the excess may be carried forward for three consecutive years; provided that in no event shall the annual credit amount exceed thirty thousand dollars (\$30,000).

(Laws 1995, Chapter 11, Section 8)

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**3.4.14.9 - CORPORATE-SUPPORTED DAY CARE CREDIT**

A. Dependent defined. Dependent for purposes of Section 7-2A-14 NMSA 1978 is a child under the age of twelve years who is a dependent as defined in Section 152 of the Internal Revenue Code, as amended or renumbered, and also includes a child of divorced or legally separated parents where the parents meet all the requirements of Section 44A(f)5 of the Internal Revenue Code, as amended or renumbered.



B. Allowable credit; partial offset.

(1) Any receipts of a corporation from an employee for the use of the child care facility shall be considered as a reduction of the allowable expenses for computing the child care credit.

(2) Example: The Spruce Corporation receives from employees a nominal fee for use of the child care facility provided by the corporation. The total expenses incurred by the corporation in this taxable year were \$12,000. The receipts from the employees amount to \$600. Therefore, the allowable tax credit to the corporation is \$3,420 computed as follows:

Total expenses incurred	\$ 12,000
Less: Receipts from employees	<u>- 600</u>
Net expenses paid	\$ <u>11,400</u>
At 30%, Allowable credit	\$ <u>3,420</u>

[10/16/84, 9/16/88, 1/7/92, 1/15/97; 3.4.14.9 NMAC - Rn & A, 3 NMAC 4.14.9, 12/14/00]

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**7-2A-15. QUALIFIED BUSINESS FACILITY REHABILITATION CREDIT-CORPORATE INCOME TAX CREDIT.--**

A. To stimulate the creation of new jobs and revitalize economically distressed areas within New Mexico enterprise zones, any taxpayer who files a corporate income tax return and who is the owner of a qualified business facility may claim a credit in an amount equal to one-half of the cost, not to exceed fifty thousand dollars (\$50,000), incurred to restore, rehabilitate or renovate a qualified business facility.

B. A taxpayer may claim the credit provided in this section for each taxable year in which restoration, rehabilitation or renovation is carried out. Except as provided in Subsection D of this section, claims for the credit provided in this section shall be limited to three consecutive years, and the maximum aggregate credit allowable shall not exceed fifty thousand dollars (\$50,000) for any single restoration, rehabilitation or renovation project for any qualified business facility. Each claim for a qualified business facility rehabilitation credit shall be accompanied by documentation and certification as the department may require by regulation or instruction.

C. No credit may be claimed or allowed pursuant to the provisions of this section for any costs incurred for a restoration, rehabilitation or renovation project for which a credit may be claimed pursuant to the provisions of Section 7-2A-8.6 or Section 7-9A-1 NMSA 1978.

D. A taxpayer who otherwise qualifies and claims a credit on a restoration, rehabilitation or renovation project on a building owned by a partnership or other business association of which the taxpayer is a member may claim a credit only in proportion to his interest in the partnership or association. The total credit claimed by all members of the partnership or association shall not exceed fifty thousand dollars (\$50,000) in the aggregate for any single restoration, rehabilitation or renovation project for a qualified business facility.

E. The credit provided in this section may only be deducted from the taxpayer's corporate income tax liability. Any portion of the maximum tax credit provided by this section that remains unused at the end of the taxpayer's taxable year may be carried forward for four consecutive taxable years; provided, the total tax credits claimed under this section shall not exceed fifty thousand dollars (\$50,000) for any single restoration, rehabilitation or renovation project for a qualified business facility.

F. As used in this section:

(1) "qualified business facility" means a building located in a New Mexico enterprise zone that is suitable for use and is put into service by a person in the manufacturing, distribution or service industry immediately following the restoration, rehabilitation or renovation project; provided, the building must have been vacant for the twenty-four month period immediately preceding the commencement of the restoration, rehabilitation or renovation project; and

(2) "restoration, rehabilitation or renovation" includes:

(a) the construction services necessary to ensure that a building is in compliance with applicable zoning codes, is safe for occupancy and meets the operating needs of a person in the manufacturing, distribution or service industry; and

(b) expansion of or additions to a building if the expansion or addition does not increase the usable square footage of the building by more than ten percent of the usable square footage of the building prior to the restoration, rehabilitation or renovation.

(Laws 1994, Chapter 115, Section 2)

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#### **3.4.14.10 - QUALIFIED BUSINESS FACILITY REHABILITATION CREDIT**

A. **No qualified business facility rehabilitation credit allowed for cultural or historic properties.** No qualified business facility rehabilitation credit will be allowed for any qualified business facility that is also:

(1) a building listed on the official New Mexico register of cultural properties; see Part 4.10.9 NMAC; or

(2) a building listed on the national register or determined to be contributing to a national register district.

B. **No qualified business facility rehabilitation credit allowed for costs qualifying for credit under Investment Credit Act.** Any expenditure by an owner of a qualified business facility that would qualify for the investment credit provided by the Investment Credit Act may not also be used as the basis for claiming the credit provided in Section 7-2A-15 NMSA 1978.

C. **Costs qualifying for the credit.** The following costs may be included in determining the qualified building rehabilitation credit:

(1) architectural and engineering services related directly to the restoration, rehabilitation or renovation project;

(2) inspection reports, such as structural conditions or environmental inspections;

(3) building permits and fees;

(4) abatement programs, such as asbestos abatement or lead-based paint abatement;

(5) all direct materials costs used in the project, including energy upgrading materials such as insulation or interior storm windows;

(6) all direct labor costs used in the project, except for salary paid to the owner for the owner's own labor;

(7) all direct materials and labor costs incurred for compliance with the Americans With Disabilities Act;

(8) rental of equipment necessary for project completion, such as tools and machinery;

(9) purchase of tools where the life expectancy of the tool is not longer than the life of the project, such as paint brushes and drop cloths;

(10) upgrade of utilities to meet current codes, including plumbing, mechanical and electrical;

(11) upgrade of utilities connections, including water, gas, electricity and telecommunications;

- (12) exterior lighting, security lighting, light fixtures, and alarm systems;
- (13) repair or replacement of existing bathroom plumbing fixtures;
- (14) New Mexico gross receipts and compensating taxes; and
- (15) liability, fire, and workers' compensation insurance premiums during the time of work on the project.

D. **Costs not qualifying for the credit.** The following costs may not be included in determining the qualified business facility rehabilitation credit:

- (1) all acquisition costs of the qualified business facility, such as surveys, appraisals, loan fees, commissions, legal fees;
- (2) architectural, engineering and planning services related to expansion of or additions to a building if the expansion or addition increases the usable square footage of the building by more than ten percent;
- (3) accounting fees;
- (4) office supplies, bank fees and charges, film and similar expenditures;
- (5) automotive repairs, maintenance and gasoline;
- (6) furnishings, including furniture, floor coverings and carpeting, wall coverings, window coverings, and linens;
- (7) purchase of tools where the life expectancy of the tool is longer than the life of the project, such as ladders, drills, and saws;
- (8) landscaping;
- (9) bathroom accessories;
- (10) kitchen appliances, cabinets, and accessories;
- (11) meals and food;
- (12) membership fees or dues;
- (13) property damaged at or stolen from a project site; and
- (14) routine maintenance including, but not limited to, cleaning, painting, minor repairs and periodic upkeep except where these items are part of an initial overall restoration, rehabilitation or renovation project.

E. **“Single project” defined.**

- (1) Except as otherwise provided in this subsection, credit for restoring, rehabilitating or renovating a qualified business facility may be claimed only once for a building, although the actual period of time during which that restoration, rehabilitation or renovation occurs may be as long as three consecutive, calendar years.

- (2) If a qualified business facility has been restored, rehabilitated, or renovated and has been put into service by a person in the manufacturing, distribution or service industry immediately following the restoration, rehabilitation or renovation, the person claims and is granted a credit under either Section 7-2-18.4 NMSA 1978 or Section 7-2A-15 NMSA 1978 and the qualified business facility is subsequently taken out of service by that person and remains vacant for twenty-four consecutive calendar months, a credit may be claimed for additional costs of restoration, rehabilitation or renovation for that building, provided all other requirements of Section 7-2A-15 NMSA 1978 are met.

F. **Prior approval required to qualify for credit.**

- (1) No qualified business facility rehabilitation credit will be allowed unless the taxpayer has submitted a plan and specifications for the restoration, rehabilitation or renovation of a qualified business facility to the New Mexico enterprise zone program officer of the economic development department and received approval from the New Mexico enterprise zone

program officer for the plan and specifications prior to commencement of the restoration, rehabilitation or renovation.

(2) In addition, the taxpayer must receive certification from the New Mexico enterprise zone program officer after completing the restoration, rehabilitation or renovation that it conformed to the plan and specifications.

**G. Filing requirements.**

(1) The claim for the qualified business facility rehabilitation credit shall consist of the certification from the New Mexico enterprise zone program officer and a completed claim form provided by the department.

(2) The certification and claim form must be submitted with and attached to the New Mexico corporation income and franchise tax return (CIT-1) or the New Mexico income and franchise tax return for "S" corporations (CIT-2) for the year or years in which the restoration, rehabilitation or renovation is carried out.

(3) The credit may be claimed only against the New Mexico corporate income tax due, and not against New Mexico franchise tax due.

**H. Record retention requirements.**

(1) The original contracts, invoices, bills, statements and other documents showing the costs incurred for the year or years in which a qualified business facility rehabilitation credit is claimed must be retained for three calendar years following the close of the calendar year in which the credit is claimed.

(2) Copies of the original contracts, invoices, bills, statements and other documents must be provided to the department on written request or during the course of an audit.

**I. Claim for qualified business facility rehabilitation credit deriving from partnership, joint venture or limited liability company.**

(1) A corporation that is a partner in a partnership or joint venture or who is a shareholder in a limited liability company that is not required to file and pay income taxes as a corporation under the Internal Revenue Code may claim a credit against the corporation's New Mexico corporate income tax due in an amount equal to the corporation's pro rata share of the qualified business facility rehabilitation credit of the partnership, joint venture or limited liability company. The total aggregate credit for all partners or shareholders shall not exceed an amount equal to one half the cost of restoration, rehabilitation or renovation or fifty thousand dollars (\$50,000), whichever is less, for a single restoration, rehabilitation or renovation project for any qualified business facility.

(2) A corporation claiming the qualified business facility rehabilitation credit derived from a partnership, joint venture or limited liability company shall claim the credit in the same manner as specified in Subsections F and G of Section 3.4.14.10 NMAC but shall also provide a schedule listing the names, addresses and social security numbers or federal employer identification numbers of all partners in the partnership or joint venture or the shareholders in the limited liability company, the pro rata share of the credit of each partner or shareholder and the federal employer identification number and New Mexico CRS identification number, if any, of the partnership, joint venture or limited liability company.

**J. Total claimable in a year may exceed \$50,000.**

(1) No corporation may claim nor may the department allow a credit in excess of \$50,000 for any single project. A corporation, however, may be involved in several different approved projects. If the corporation's share of allowable credits from the several projects

exceeds \$50,000, the corporation may claim and the department may allow an aggregate credit amount which exceeds \$50,000.

(2) Example: A corporation owns a qualified business facility and is also a partner in a partnership and a shareholder in a limited liability company, both of which also own qualified business facilities. All three undertake restoration, renovation or rehabilitation projects on their respective buildings within the same year. The corporation earns credits of \$40,000 from the corporation's own building, and \$20,000 and \$12,000 shares from the other two. The corporation may claim a credit equal to the sum of the corporation's share from the three projects, or \$72,000. If, however, the \$72,000 exceeded the corporation's income tax liability before application of this credit, then the excess would have to be carried into succeeding taxable years.

**K. Priority in claiming.** A corporation that has both an amount of carryover credit from a prior taxable year and a new credit amount derived from a qualifying restoration, rehabilitation or renovation project in the taxable year for which the return is being filed shall first apply the amount of carryover credit against the corporation's income tax liability. If the amount of the liability exceeds the amount of the carryover credit, then the current year credit may be applied against the liability.

[2/9/95, 1/15/97; 3.4.14.10 NMAC - Rn & A, 3 NMAC 4.14.10, 12/14/00]

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**7-2A-16 INTERGOVERNMENTAL BUSINESS TAX CREDIT.--**

A. With respect to the net income of a taxpayer engaged in the transaction of business occurring after July 1, 1997 from a new business on Indian land, the person who is liable for the payment of the corporate income tax may claim a credit as provided in Subsection D of this section against the corporate income tax for the aggregate amount of tax paid to an Indian nation, tribe or pueblo located in whole or in part within New Mexico.

B. The credit provided by this section may be referred to as the "intergovernmental business tax credit".

C. As used in this section:

(1) "aggregate amount of tax" means the total of all taxes imposed by an Indian nation, tribe or pueblo located in whole or in part in New Mexico on income derived from the new business's activity on Indian land, except a tax shall not be included in that total if the tax is eligible for a credit pursuant to the provisions of Section 7-29C-1 NMSA 1978 or any other intergovernmental tax credit that provides a similar tax credit;

(2) "Indian land" means all land in New Mexico that on March 1, 1997 was:

(a) within the exterior boundaries of an Indian reservation or pueblo grant; or

(b) lands held in trust by the United States for an individual Indian nation, tribe or pueblo;

(3) "new business" means a manufacturer or processor that occupies a new business facility or a grower that commences operation in New Mexico on or after July 1, 1997; and

(4) "new business facility" means a facility on Indian land that satisfies the following requirements:

(a) the facility is employed by the taxpayer in the operation of a revenue-producing enterprise. The facility shall not be considered a "new business facility" in the hands of the taxpayer if the taxpayer's only activity with respect to the facility is to lease it to another person;

(b) the facility is acquired by or leased to the taxpayer on or after January 1, 1997. The facility shall be deemed to have been acquired by or leased to the taxpayer on or after the specified date if the transfer of title to the taxpayer, the transfer of possession pursuant to a binding contract to transfer title to the taxpayer or the commencement of the term of the lease to the taxpayer occurs on or after that date or if the facility is constructed, erected or installed by or on behalf of the taxpayer, the construction, erection or installation is completed on or after that date;

(c) the facility is a newly acquired facility in which the taxpayer is not continuing the operation of the same or a substantially identical revenue-producing enterprise that previously was in operation on the Indian land of the Indian nation, tribe or pueblo where the facility is now located; a

facility is a "newly acquired facility" if the facility was acquired or leased by the taxpayer from another person even if the facility was employed in a revenue-producing enterprise on the Indian land of the same Indian nation, tribe or pueblo immediately prior to the transfer of the title to the facility to the taxpayer or immediately prior to the commencement of the term of the lease of the facility to the taxpayer by another person provided that the revenue-producing enterprise of the previous occupant was not the same or substantially identical to the taxpayer's revenue-producing enterprise; and

(d) the facility is not a replacement business facility for a business facility that existed on the Indian land of the Indian nation, tribe or pueblo where the business is now located.

D. The intergovernmental business tax credit shall be determined separately for each reporting period and shall be equal to fifty percent of the lesser of:

- (1) the aggregate amount of tax paid by a taxpayer; or
- (2) the amount of the taxpayer's corporate income tax due for the reporting period from the new business's activity conducted on Indian land.

E. The department shall administer and interpret the provisions of this section in accordance with the provisions of the Tax Administration Act.

F. The burden of showing entitlement to a credit authorized by this section is on the taxpayer claiming it, and the taxpayer shall furnish to the appropriate tax collecting agency, in the manner determined by the department, proof of payment of the aggregate amount of tax on which the credit is based.

G. For a taxpayer qualifying for the credit provided by this section that conducts business in New Mexico both on and off Indian land, the taxpayer's corporate income tax liability derived from the new business activity conducted on Indian land shall be equal to the sum of the products of one-half of the taxpayer's New Mexico corporate income tax liability before application of the credit provided by this section multiplied by the payroll factor and one-half of the taxpayer's New Mexico corporate income tax liability before application of the credit provided by this section multiplied by the property factor. The factors shall be determined as follows:

(1) the payroll factor is a fraction, the numerator of which is the amount of compensation paid to employees employed during the tax period by the taxpayer in his new business on Indian land, and the denominator of which is the total amount of compensation paid to employees employed during the tax period by the taxpayer in all of New Mexico, including Indian land; and

(2) the property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in the new business on Indian land in New Mexico during the tax period and the denominator of which is the average value of all the taxpayer's real and tangible property owned or rented and used in New Mexico, including on Indian land, during the tax period.

(Laws 1997, Chapter 58, Section 1)

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**7-2A-17.1. JOB MENTORSHIP TAX CREDIT.--**

A. To encourage New Mexico businesses to hire youth participating in career preparation education programs, a taxpayer that is a New Mexico business and that files a corporate income tax return may claim a credit in an amount equal to fifty percent of gross wages paid to qualified students who are employed by the taxpayer during the taxable year for which the return is filed. The tax credit provided by this section may be referred to as the "job mentorship tax credit".

B. A taxpayer may claim the job mentorship tax credit provided in this section for each taxable year in which the taxpayer employs one or more qualified students. The maximum aggregate credit allowable shall not exceed fifty percent of the gross wages paid to not more than ten qualified students employed by the taxpayer for up to three hundred twenty hours of employment of each qualified student in each taxable year for a maximum of three taxable years for each qualified student. In no event shall a taxpayer claim a credit in excess of twelve thousand dollars (\$12,000) in any taxable year. The employer shall certify that hiring the qualified student does not displace or replace a current employee.

C. The department shall issue job mentorship tax credit certificates upon request to any accredited New Mexico secondary school that has a school-sanctioned career preparation education program. The maximum number of certificates that may be issued in a school year to any one school is equal to the number of qualified students in the school-sanctioned career preparation education program on October 15 of that school year, as certified by the school principal.

D. A job mentorship tax credit certificate may be executed by a school principal with respect to a qualified student, and the executed certificate may be transferred to a New Mexico business that employs that student. By executing the certificate with respect to a student, the school principal certifies that the school has a school-sanctioned career preparation education program and the student is a qualified student.

E. To claim the job mentorship tax credit, the taxpayer must submit with respect to each employee for whom the credit is claimed:

- (1) a properly executed job mentorship tax credit certificate;
- (2) information required by the secretary with respect to the employee's employment by the taxpayer during the taxable year for which the credit is claimed; and

- (3) information required by the secretary that the employee was not also employed in the same taxable year by another New Mexico business qualifying for and claiming a job mentorship tax credit for that employee pursuant to this section or the Income Tax Act.

F. The job mentorship tax credit may only be deducted from the taxpayer's corporate income tax liability for the taxable year. Any portion of the maximum credit provided by this section that remains unused at the end of the taxpayer's taxable year may be carried forward for three consecutive

taxable years; provided the total credits claimed pursuant to this section shall not exceed the maximum allowable under Subsection B of this section.

G. As used in this section:

(1) "career preparation education program" means a work-based learning or school-to-career program designed for secondary school students to create academic and career goals and objectives and find employment in a job meeting those goals and objectives;

(2) "New Mexico business" means a corporation that carries on a trade or business in New Mexico and that employs in New Mexico fewer than three hundred full-time employees during the taxable year; and

(3) "qualified student" means an individual who is at least fourteen years of age but not more than twenty-one years of age who is attending full time an accredited New Mexico secondary school and who is a participant in a career preparation education program sanctioned by the secondary school.

(Laws 2003, Chapter 400, Section 2)

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**7-2A-18. CREDIT--CERTAIN ELECTRONIC EQUIPMENT.--**

**A. A taxpayer who files a New Mexico corporate income tax return, is licensed by the state to sell cigarettes, other tobacco products or alcoholic beverages and has purchased and has in use equipment that electronically reads identification cards to verify age, may claim a one-time credit in an amount equal to three hundred dollars (\$300) for each business location the taxpayer has such equipment in use.**

**B. The credit provided in this section may only be deducted from the taxpayer's New Mexico income tax liability for the taxable year.**

**C. A taxpayer who otherwise qualifies and claims a credit pursuant to this section for equipment owned by a partnership or other business association of which the taxpayer is a member may claim a credit only in proportion to his interest in the partnership or association. The total credit claimed by all members of the partnership or association shall not exceed three hundred dollars (\$300) in the aggregate for each business location the partnership or association has purchased equipment and has it in use.  
(Laws 2001, Chapter 73, Section 2)**

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**7-2A-19. RENEWABLE ENERGY PRODUCTION TAX CREDIT--  
LIMITATIONS--DEFINITIONS--CLAIMING THE CREDIT.--**

**A. The tax credit provided in this section may be referred to as the "renewable energy production tax credit". The tax credit provided in this section may not be claimed with respect to the same electricity production for which the renewable energy production tax credit provided in the Income Tax Act has been claimed.**

**B. A person is eligible for the renewable energy production tax credit if the person:**

**(1) holds title to a qualified energy generator that first produced electricity on or before January 1, 2018; or**

**(2) leases property upon which a qualified energy generator operates from a county or municipality under authority of an industrial revenue bond and if the qualified energy generator first produced electricity on or before January 1, 2018.**

**C. The amount of the tax credit shall equal one cent (\$.01) per kilowatt-hour of the first four hundred thousand megawatt-hours of electricity produced by the qualified energy generator in the taxable year using a wind-or biomass-derived qualified energy resource, provided that the total amount of tax credits claimed by all taxpayers for a single qualified energy generator in a taxable year using a wind- or biomass-derived qualified energy resource shall not exceed one cent (\$.01) per kilowatt-hour of the first four hundred thousand megawatt-hours of electricity produced by the qualified energy generator.**

**D. The amount of the tax credit for electricity produced by a qualified energy generator in the taxable year using a solar-light-derived or solar-heat-derived qualified energy resource shall be at the amounts specified in Paragraphs (1) through (10) of this subsection; provided that the total amount of tax credits claimed for a taxable year by all taxpayers for a single qualified energy generator using a solar-light-derived or solar-heat-derived qualified energy resource shall be limited to the first two hundred thousand megawatt-hours of electricity produced by the qualified energy generator in the taxable year:**

**(1) one and one-half cents (\$.015) per kilowatt-hour in the first taxable year in which the qualified energy generator produces electricity using a solar-light-derived or solar-heat-derived qualified energy resource;**

**(2) two cents (\$.02) per kilowatt-hour in the second taxable year in which the qualified energy generator produces electricity using a solar-light-derived or solar-heat-derived qualified energy resource;**

**(3) two and one-half cents (\$.025) per kilowatt-hour in the third taxable year in which the qualified energy generator produces electricity using a solar-light-derived or solar-heat-derived qualified energy resource;**

(4) three cents (\$.03) per kilowatt-hour in the fourth taxable year in which the qualified energy generator produces electricity using a solar-light-derived or solar-heat-derived qualified energy resource;

(5) three and one-half cents (\$.035) per kilowatt-hour in the fifth taxable year in which the qualified energy generator produces electricity using a solar-light-derived or solar-heat-derived qualified energy resource;

(6) four cents (\$.04) per kilowatt-hour in the sixth taxable year in which the qualified energy generator produces electricity using a solar-light-derived or solar-heat-derived qualified energy resource;

(7) three and one-half cents (\$.035) per kilowatt-hour in the seventh taxable year in which the qualified energy generator produces electricity using a solar-light-derived or solar-heat-derived qualified energy resource;

(8) three cents (\$.03) per kilowatt-hour in the eighth taxable year in which the qualified energy generator produces electricity using a solar-light-derived or solar-heat-derived qualified energy resource;

(9) two and one-half cents (\$.025) per kilowatt-hour in the ninth taxable year in which the qualified energy generator produces electricity using a solar-light-derived or solar-heat-derived qualified energy resource; and

(10) two cents (\$.02) per kilowatt-hour in the tenth taxable year in which the qualified energy generator produces electricity using a solar-light-derived or solar-heat-derived qualified energy resource.

E. A taxpayer eligible for a renewable energy production tax credit pursuant to Subsection B of this section shall be eligible for the renewable energy production tax credit for ten consecutive years, beginning on the date the qualified energy generator begins producing electricity.

F. As used in this section:

(1) "biomass" means organic material that is available on a renewable or recurring basis, including:

(a) forest-related materials, including mill residues, logging residues, forest thinnings, slash, brush, low-commercial value materials or undesirable species, salt cedar and other phreatophyte or woody vegetation removed from river basins or watersheds and woody material harvested for the purpose of forest fire fuel reduction or forest health and watershed improvement;

(b) agricultural-related materials, including orchard trees, vineyard, grain or crop residues, including straws and stover, aquatic plants and agricultural processed co-products and waste products, including fats, oils, greases, whey and lactose;

(c) animal waste, including manure and slaughterhouse and other processing waste;

(d) solid woody waste materials, including landscape or right-of-way tree trimmings, rangeland maintenance residues, waste pallets, crates and manufacturing, construction and demolition wood wastes,

excluding pressure-treated, chemically treated or painted wood wastes and wood contaminated with plastic;

(e) crops and trees planted for the purpose of being used to produce energy;

(f) landfill gas, wastewater treatment gas and biosolids, including organic waste byproducts generated during the wastewater treatment process; and

(g) segregated municipal solid waste, excluding tires and medical and hazardous waste;

(2) "qualified energy generator" means a facility with at least one megawatt generating capacity located in New Mexico that produces electricity using a qualified energy resource and that sells that electricity to an unrelated person; and

(3) "qualified energy resource" means a resource that generates electrical energy by means of a fluidized bed technology or similar low-emissions technology or a zero-emissions generation technology that has substantial long-term production potential and that uses only the following energy sources:

(a) solar light;

(b) solar heat;

(c) wind; or

(d) biomass.

G. A person that holds title to a facility generating electricity from a qualified energy resource or a person that leases such a facility from a county or municipality pursuant to an industrial revenue bond may request certification of eligibility for the renewable energy production tax credit from the energy, minerals and natural resources department, which shall determine if the facility is a qualified energy generator. The energy, minerals and natural resources department may certify the eligibility of an energy generator only if the total amount of electricity that may be produced annually by all qualified energy generators that are certified pursuant to this section and pursuant to the Income Tax Act will not exceed a total of two million megawatt-hours plus an additional five hundred thousand megawatt-hours produced by qualified energy generators using a solar-light-derived or solar-heat-derived qualified energy resource. Applications shall be considered in the order received. The energy, minerals and natural resources department may estimate the annual power-generating potential of a generating facility for the purposes of this section. The energy, minerals and natural resources department shall issue a certificate to the applicant stating whether the facility is an eligible qualified energy generator and the estimated annual production potential of the generating facility, which shall be the limit of that facility's energy production eligible for the tax credit for the taxable year. The energy, minerals and natural resources department may issue rules governing the procedure for administering the provisions of this subsection and shall report annually to the appropriate interim legislative committee information that will allow the legislative committee to

analyze the effectiveness of the renewable energy production tax credit, including the identity of qualified energy generators, the energy production means used, the amount of energy produced by those qualified energy generators and whether any applications could not be approved due to program limits.

H. A taxpayer may be allocated all or a portion of the right to claim a renewable energy production tax credit without regard to proportional ownership interest if:

(1) the taxpayer owns an interest in a business entity that is taxed for federal income tax purposes as a partnership;

(2) the business entity:

(a) would qualify for the renewable energy production tax credit pursuant to Paragraph (1) or (2) of Subsection B of this section;

(b) owns an interest in a business entity that is also taxed for federal income tax purposes as a partnership and that would qualify for the renewable energy production tax credit pursuant to Paragraph (1) or (2) of Subsection B of this section; or

(c) owns, through one or more intermediate business entities that are each taxed for federal income tax purposes as a partnership, an interest in the business entity described in Subparagraph (b) of this paragraph;

(3) the taxpayer and all other taxpayers allocated a right to claim the renewable energy production tax credit pursuant to this subsection own collectively at least a five percent interest in a qualified energy generator;

(4) the business entity provides notice of the allocation and the taxpayer's interest to the energy, minerals and natural resources department on forms prescribed by that department; and

(5) the energy, minerals and natural resources department certifies the allocation in writing to the taxpayer.

I. Upon receipt of notice of an allocation of the right to claim all or a portion of the renewable energy production tax credit, the energy, minerals and natural resources department shall promptly certify the allocation in writing to the recipient of the allocation.

J. A taxpayer may claim the renewable energy production tax credit by submitting to the taxation and revenue department the certificate issued by the energy, minerals and natural resources department, pursuant to Subsection G or H of this section, documentation showing the taxpayer's interest in the facility, documentation of the amount of electricity produced by the facility in the taxable year and any other information the taxation and revenue department may require to determine the amount of the tax credit due the taxpayer.

K. If the requirements of this section have been complied with, the department shall approve the renewable energy production tax credit. The credit may be deducted from a taxpayer's New Mexico corporate income tax liability for the taxable year for which the credit is claimed. If the amount of

**tax credit exceeds the taxpayer's corporate income tax liability for the taxable year:**

**(1) the excess may be carried forward for a period of five taxable years; or**

**(2) if the tax credit was issued with respect to a qualified energy generator that first produced electricity using a qualified energy resource on or after October 1, 2007, the excess shall be refunded to the taxpayer.**

**L. Once a taxpayer has been granted a renewable energy production tax credit for a given facility, that taxpayer shall be allowed to retain the facility's original date of application for tax credits for that facility until either the facility goes out of production for more than six consecutive months in a year or until the facility's ten-year eligibility has expired.**

**(Laws 2007, Chapter 204, Section 1)**

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### **3.13.19.7 - DEFINITIONS**

A. "Applicant" means a business entity that holds title to a qualifying energy generator or leases property upon which a qualified energy generator operates from a county or municipality pursuant to an industrial revenue bond, or plans to develop a qualified energy generator and will hold title to the qualified energy generator or lease property upon which the qualified energy generator operates from a county or municipality pursuant to an industrial revenue bond at the time the division certifies that the facility is a qualified energy generator, and that applies to receive the renewable energy production tax credit pursuant to this part for itself or on other taxpayers' behalf.

B. "Biomass" means agricultural or animal waste; thinnings from trees less than 15 inches in diameter; slash and brush; lumber mill or sawmill residues; and salt cedar and other phreatophytes removed from watersheds or river basins;

C. "Confidential information" means information included in the renewable energy production tax credit application package or that the department requires the applicant to submit as part of the approval process that the applicant requests in writing to be held confidential.

D. "Department" means the energy, minerals and natural resources department.

E. "Director" means the director or head of the department's energy conservation and management division.

F. "Division" means the department's energy conservation and management division.

G. "Five percent ownership" means New Mexico corporate income taxpayers that individually or collectively, directly or indirectly, own at least five percent of a qualified energy generator or of the total capitalized cost to construct a qualified energy generator; and are entitled to receive at least five percent of cash distributed to owners of the qualified energy generator over its useful life.

H. "Generating capacity" means a qualified energy generator's nominal rated electrical power output (nameplate capacity) in megawatts during optimum resource conditions, as the generator's manufacturer specifies. Generating capacity shall be at least 10 megawatts. If the prevailing resource conditions at a project site are insufficient for a qualified energy generator to attain full nameplate capacity output at the time the division issues the certification, the power



output shall be that which corresponds to at least 10 megawatts nominal rating according to the equipment manufacturer's published performance ratings for those prevailing conditions.

I. "Interconnection agreement" means an agreement allowing the applicant to interconnect the qualified energy generator, of a specified type and size, to a suitable electric transmission or distribution line.

J. "Land rights agreement" means an agreement providing the applicant with control of land and the rights necessary to construct and operate a qualified energy generator.

K. "Notice of allocation" means a form the division prescribes that an applicant completes indicating the allocation of its or another entity's right to claim the tax credit to one or more taxpayers and each taxpayer's interest in the qualified energy generator.

L. "Power purchase agreement" means an agreement that binds an applicant to provide power at a specified price and a buyer to purchase power from the qualified energy generator.

M. "Project finance agreement" means an agreement that binds a capable entity to provide the financing necessary for a qualified energy generator's construction.

N. "Qualified energy generator" means a facility with at least 10 megawatts generating capacity located in New Mexico that produces electricity using a qualified energy resource and that sells electricity to an unrelated person.

O. "Qualified energy resource" means a resource that generates electrical energy by means of a fluidized bed technology or similar low-emissions technology or a zero-emissions generation technology that has substantial long-term production potential and that uses only the following energy sources: solar light, solar heat, wind, or biomass.

P. "Renewable energy production tax credit application package" or "application package" means the application documents submitted by an applicant to the division for certification to receive the renewable energy production tax credit.

Q. "Secretary" means the head of the department.

R. "Tax credit" means the renewable energy production tax credit.

S. "Unrelated person" means a person who is not a partner or joint venture participant who owns more than 50 percent of the profit interest or capital interest in the partnership or joint venture; shareholder who owns more than 50 percent of the shares, subsidiary, or parent company; or a trade or business that is under common control. If a corporation is a member of an affiliated group of corporations filing a consolidated tax return, the division will treat the corporation as selling electricity to an unrelated person if another member of the affiliated group sells the electricity to the person.

[3.13.19.7 NMAC - N, 3-15-03; A, 1-15-04; A, 03-31-06]

### **3.13.19.8 - GENERAL PROVISIONS**

A. Only those taxpayers that meet the requirements of 3.13.19.14 NMAC are eligible for a tax credit.

B. A proposed project shall meet these required milestones. If a project fails to meet a milestone, the division shall reject the application.

(1) Applicant submits a complete renewable energy production tax credit application package to the division.

(2) Construction of a qualified energy generator shall commence within 12 months of the application's approval. The applicant shall meet this requirement by entering into a construction contract and by the placement of a permanent, physical part of the facility, such as

a poured concrete foundation. Applicant shall submit to the division a copy of the contract accompanied by a letter certifying that such construction has occurred.

(3) A qualified energy generator shall generate electrical power and achieve commercial operation, demonstrating at least 10 megawatts generating capacity, within 24 months of the division's approval of the application.

(4) Within 24 months of the application's approval, the applicant shall submit to the division:

- (a) the name of the qualified energy generator;
- (b) electric output meter readings documenting commercial operation and indicating at least 10 megawatts output;
- (c) a copy of the bill of sale or other documentation sufficient to evidence a sale of the power indicating the amount of electrical energy produced, precise time period of production, and the name of the buyer of the electricity; and
- (d) records to verify that the applicant is selling to unrelated persons.

C. NMSA 1978, Section 7-2A-19 limits the power production of a qualified energy generator eligible for a tax credit to 400,000 megawatt-hours per year. It also limits the eligible power production of all qualified energy generators to 2,000,000 megawatt-hours per year. When the 2,000,000 megawatt-hours limit is reached based on the total of applications approved, the division will no longer approve applications, but will accept them for future consideration in the event that approved facilities are not completed on schedule and tax credit becomes available. The division shall keep a record of the order of receipt of all applications.

[3.13.19.8 NMAC - N, 3-15-03; A, 1-15-04; A, 03-31-06]

### **3.13.19.9 - APPLICATION**

A. A renewable energy production tax credit application form can be obtained from the division.

B. An applicant shall submit an application package to the division.

C. The application package shall consist of a completed renewable energy production tax credit application form, with the following required attachments:

- (1) a copy of the land rights agreement;
- (2) a copy of the interconnection agreement or a system impact study agreement between the applicant and the interconnect utility, or its functional equivalent; and
- (3) a copy of the power purchase agreement, project finance agreement, or evidence of self-financing.

D. The division shall return an incomplete application to the applicant.

[3.13.19.9 NMAC - N, 3-15-03; A, 03-31-06]

### **3.13.19.10 - APPLICATION REVIEW PROCESS**

A. The division shall consider applications in the order received, according to the day it receives them, but not the time of day. The division shall give applications it receives on the same day equal consideration. If the division approves applications it received on the same day and they would exceed the overall limit of tax credit availability, then the division shall divide the available credit among those applications on a prorated, per megawatt-hour basis.

B. The division shall approve or reject an application within 30 days following its receipt of the application package, or if the division requires more time it shall notify the applicant of the reason and shall approve or reject the application as soon as possible.

C. The division shall review the application package to determine if the proposed generator will be a qualified energy generator and if the requisite documentation specified in Subsection C of 3.13.19.9 NMAC, above, is valid.

D. The division shall check the accuracy of the applicant's estimated annual production potential and make any necessary adjustments to ensure the potential is reasonably achievable. The limit of the qualified energy generator's energy production eligible for the tax credit for the taxable year shall be the lesser of: the estimate the division approves, or 400,000 megawatt-hours, or the eligible electricity remaining of the 2,000,000 megawatt-hours total for the state.

E. If the division finds that the application package meets the required criteria and tax credit is available, the division shall approve the application. The division shall approve the application by issuing a letter to the applicant, which shall include the limit of the qualified energy generator's annual production eligible for the tax credit.

F. The division shall reject an application that is not complete or correct, does not meet the criteria for approval or fails to meet a required milestone. The division's rejection letter shall state the reasons why it rejected the application. The applicant may resubmit the application package for the rejected project. The division shall place the resubmitted application in the review schedule as if it were a new project.

[3.13.19.10 NMAC - N, 3-15-03; A, 1-15-04; A, 03-31-06]

### **3.13.19.11 - CONFIDENTIALITY REQUESTS, WAIVERS, REVIEWS AND APPEALS**

A. An applicant may request in writing that the department hold materials submitted as part of the application package and certification process confidential pursuant to NMSA 1978, Section 71-2-8. The applicant shall address the request to the director.

B. An applicant may request in writing that the director waive any provision of the application unless NMSA 1978, Section 7-2A-19 requires the provision. The applicant shall address the request to the director, and include the facts and circumstances that support a waiver.

C. The applicant shall have the right to request in writing review of the director's decision to reject an application or review of the division's adjustments to the annual production estimate. The applicant shall address the request to the director and include the reasons that the director should review the decision.

D. Any person having an interest that the request does or may adversely affect may oppose an applicant's request to hold materials an applicant has submitted as part of an application package confidential or the director grant an applicant's request to waive a provision of the application. The person shall submit the opposition in writing, within 10 days of the request, to the director and send a copy to the applicant. The opposition shall include the reasons that the department should not hold the information confidential or that the director should not grant the waiver.

(1) The director shall consider the request and the opposition, if any. The director may hold a hearing and appoint a hearing officer to conduct the hearing. The director shall send a final decision to the applicant and any person or entity opposing the request within 20 days after receiving the request, the opposition, if the request is opposed, or the date the hearing is held.

(2) The applicant or the person or entity opposing the request may appeal in writing to the secretary a director's decision. The notice of appeal shall include the reasons that the secretary should overturn the director's decision.

E. The secretary shall consider any appeal from a director's decision. The applicant must file the appeal and the reasons for with the secretary within 10 working days of the director's

issuance of his decision. The secretary may hold a hearing and appoint a hearing officer to conduct the hearing. The secretary shall send a final decision to the appellant within 20 days after receiving the request or the date the hearing concludes.

[3.13.19.11 NMAC - N, 3-15-03; A, 03-31-06]

### **3.13.19.12 - CERTIFICATION**

A. When a qualified energy generator, for which the division has approved a tax credit application package, produces power and it is sold to an unrelated person, then the applicant may request certification from the division. If the applicant is different from the original applicant then the new applicant shall submit a revised application form to the division indicating who is eligible for the tax credit. The qualified energy generator must demonstrate at least 10 megawatts generating capacity. The applicant shall submit:

- (1) the name of the qualified energy generator;
- (2) electric power output meter readings indicating at least 10 megawatts generating capacity;
- (3) a copy of the bill of sale or equivalent documentation indicating the amount of electrical energy the qualified energy generator produced, precise time period of production, and the name and relationship, if any, of the buyer of the electricity; and
- (4) a notice of allocation indicating the allocation of the right to claim the tax credit and evidence of each taxpayers' ownership interest.

B. For purposes of monitoring the applicant's compliance with this part, the division or its authorized representative shall have the right to visit a qualified energy generator upon giving the applicant five days notice.

C. If the division finds that a qualified energy generator, for which it has approved an application package, meets this part's criteria, the division shall issue a certificate to the applicant stating that the facility is an eligible qualified energy generator, the facility's estimated annual production potential and the limit of that facility's energy production eligible for the tax credit.

[3.13.19.12 NMAC - N, 3-15-03; A, 1-15-04; A, 03-31-06]

### **3.13.19.13 - CLAIMING THE TAX CREDIT**

A. To claim the renewable energy production tax credit, a taxpayer shall submit to the New Mexico taxation and revenue department the certificate the department issued to the applicant stating that the facility is an eligible qualified energy generator, a copy of the certificate the department issued to the taxpayer showing the taxpayer's right to claim all or a portion of the tax credit, documentation showing the taxpayer's ownership interest in the qualified energy generator, documentation of the amount of energy the qualified energy generator produced in the taxable year, and any other information the taxation and revenue department may require to determine the amount of the credit due to each taxpayer claiming the credit.

B. If the amount of tax credit the taxpayer claims exceeds the taxpayer's corporate income tax liability, the taxpayer may carry the excess forward for up to five consecutive taxable years.

C. Once the department has certified a facility as a qualified energy generator eligible for the tax credit taxpayers retain the original date of application for tax credits for that facility until either the qualified energy generator is out of production for more than six consecutive months in a year or until the qualified energy generator's 10-year eligibility has expired.

[3.13.19.13 NMAC - N, 3-15-03; A, 03-31-06]

### **3.13.19.14 - ALLOCATION OF TAX CREDIT**

A. A business entity may allocate a taxpayer all or a portion of the right to claim a tax credit without regard to proportional ownership if:

(1) the taxpayer owns an interest in a business entity that is taxed for federal income tax purposes as a partnership;

(2) the business entity (a) is the applicant; (b) owns an interest in the business entity, the applicant, that is also taxed for federal income tax purposes as a partnership; or (c) owns, through one or more intermediate business entities that are each taxed for federal income tax purposes as a partnership, an interest in a business entity, the applicant, as described in (b); and

(3) the taxpayer and all other taxpayers a business entity allocates a right to claim the renewable energy production tax credit pursuant to this section collectively have at least a five percent ownership interest in the applicant's qualified energy generator; collective ownership means that a business entity, which may be a partnership or have subsidiary business entities, owns at least a five percent interest in the qualified energy generator; a business entity that owns at least a five percent interest in the qualified energy generator may receive the right to all of a tax credit, but shall only allocate that right to its subsidiaries or partners based upon their actual ownership interest in the business entity; for example, the business entity owning the five percent interest is a partnership comprised of three business entities; one business entity owns a 40 percent interest in the business and the other two business entities each own a 30 percent interest; 90 percent of the tax credit is allocated to the business entity that owns a five percent interest in the qualified energy generator; the partner owning 40 percent is entitled to 36 percent of the total tax credit and the other two partners are each entitled to 27 percent of the total tax credit.

B. In order to allocate all or a portion of the right to claim a renewable energy production tax credit, a business entity shall notify the applicant of its allocation. The applicant shall then compile each business entity's allocation and submit the notice of the allocation with documentation of each taxpayer's ownership interest to the department on forms the department provides.

C. Upon receiving the notice of allocation from the applicant, the department shall promptly certify the allocation in writing to the applicant and any taxpayer receiving the allocation if the taxpayer meets the criteria in Subsection A of 3.13.19.14 NMAC. A taxpayer receiving an allocation shall be entitled to claim all such tax credit allocated to it that was generated during the tax year.

D. If ownership of a business entity that has been allocated a right to claim all or a portion of the right to claim a tax credit changes, the replacement owner shall be entitled to claim the tax credit. The applicant may submit a revised notice of allocation only once in a calendar year and in no event later than December 31 of the calendar year for the revised allocation.

[3.13.19.14 NMAC - N, 03-31-06]

### **3.13.19.15 - DETERMINATION OF WHETHER A GENERATOR IS A SEPARATE FACILITY**

When determining whether a generator is a separate facility or is one of several generators located in the same geographical location (e.g. mesa, section of land) that comprise a single facility, the division shall consider the following factors that indicate whether or not the generators are operated as separate facilities. The division shall consider factors such as whether

the same corporate entity holds title to or leases property from a county or municipality pursuant to an industrial revenue bond where the generating infrastructure is located; whether the same buyer is purchasing the electricity the generators produce; whether the generators have different interconnection agreements or system impact study agreements; whether the generators have different power purchase or project finance agreements; whether the generator is connected with other generators before entering the main transmission line; and any other factor the director deems relevant to the determination.

[3.13.19.15 NMAC - N, 03-31-06]

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**\*\*\* REPEALED EFFECTIVE January 1, 2006  
BY LAWS 2002, CHAPTER 91, SECTION 3 \*\*\***

**7-2A-20. CREDIT FOR PRODUCED WATER. --**

*A. An operator that files a New Mexico corporate income tax return may take a tax credit in an amount equal to one thousand dollars (\$1,000) per acre-foot of produced water not to exceed four hundred thousand dollars (\$400,000) per year if the following conditions are met:*

*(1) the operator delivers the water to the interstate stream commission at the Pecos river in compliance with the applicable requirements of New Mexico's Water Quality Act, New Mexico's water quality control commission regulations and federal clean water acts;*

*(2) the operator delivers the water solely in a manner approved by the interstate stream commission to contribute to delivery obligations pursuant to the Pecos River Compact; and*

*(3) upon delivery to the interstate stream commission at the Pecos river, title is transferred to the interstate stream commission, which shall indemnify the operator from future liability.*

*B. The tax credit provided in this section may only be deducted from the operator's corporate income tax liability. Any portion of the tax credit provided in this section that remains unused at the end of the operator's taxable year may be carried forward for three consecutive taxable years.*

*C. As used in this section, "produced water" means water produced from oil or gas drilling and production from a depth of two thousand five hundred feet or more below the surface or refining crude oil or processing natural gas.*

*D. As used in this section, "operator" means a refinery, a natural gas processor or a person who operates an oil or gas well.*

*E. The interstate stream commission shall provide legal confirmation of receipt of the water from the operator, and the operator shall provide documentation to the department to prove eligibility for the tax credit provided in this section.*

*(Laws 2002, Chapter 91, Section 2)*

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**7-2A-21. SUSTAINABLE BUILDING TAX CREDIT.--**

A. The tax credit provided by this section may be referred to as the "sustainable building tax credit". The sustainable building tax credit shall be available for the construction in New Mexico of a sustainable building, 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. The tax credit provided in this section may not be claimed with respect to the same sustainable building for which the sustainable building tax credit provided in the Income Tax Act has been claimed.

B. The purpose of the sustainable building tax credit is to encourage the construction of sustainable buildings and the renovation of existing buildings into sustainable buildings.

C. A taxpayer that files a corporate income tax return is eligible to be granted a sustainable building tax credit by the department if the taxpayer submits a document issued pursuant to Subsection J of this section with the taxpayer's corporate income tax return.

D. For taxable years ending on or before December 31, 2016, the sustainable building tax credit may be claimed with respect to a sustainable commercial building. The credit shall be calculated based on the certification level the building has achieved in the LEED green building rating system and the amount of qualified occupied square footage in the building, as indicated on the following chart:

<b>LEED Rating Level Occupied Square Footage</b>	<b>Qualified Square Foot</b>	<b>Tax Credit per</b>
<b>LEED-NC Silver</b>	<b>First 10,000</b>	<b>\$3.50</b>
Next 40,000	\$1.75	
Over 50,000		
up to 500,000	\$ .70	
<b>LEED-NC Gold</b>	<b>First 10,000</b>	<b>\$4.75</b>
Next 40,000	\$2.00	
Over 50,000		
up to 500,000	\$1.00	
<b>LEED-NC Platinum</b>	<b>First 10,000</b>	<b>\$6.25</b>
Next 40,000	\$3.25	
Over 50,000		
up to 500,000	\$2.00	
<b>LEED-EB or CS Silver</b>	<b>First 10,000</b>	<b>\$2.50</b>
Next 40,000	\$1.25	
Over 50,000		
up to 500,000	\$ .50	
<b>LEED-EB or CS Gold</b>	<b>First 10,000</b>	<b>\$3.35</b>



	Next 40,000	\$1.40		
	Over 50,000			
	up to 500,000	\$ .70		
<b>LEED-EB or CS Platinum</b>			<b>First 10,000</b>	<b>\$4.40</b>
	Next 40,000	\$2.30		
	Over 50,000			
	up to 500,000	\$1.40		
<b>LEED-CI Silver</b>			<b>First 10,000</b>	<b>\$1.40</b>
	Next 40,000	\$ .70		
	Over 50,000			
	up to 500,000	\$ .30		
<b>LEED-CI Gold</b>			<b>First 10,000</b>	<b>\$1.90</b>
	Next 40,000	\$ .80		
	Over 50,000			
	up to 500,000	\$ .40		
<b>LEED-CI Platinum</b>			<b>First 10,000</b>	<b>\$2.50</b>
	Next 40,000	\$1.30		
	Over 50,000			
	up to 500,000	\$ .80.		

E. For taxable years ending on or before December 31, 2016, the sustainable building tax credit may be claimed with respect to a sustainable residential building. The credit shall be calculated based on the amount of qualified occupied square footage, as indicated on the following chart:

<b>Rating System/Level</b>	<b>Qualified Occupied Square Footage</b>	<b>Tax Credit per Square Foot</b>
<b>LEED-H Silver or Build</b>	<b>First 2,000</b>	<b>\$5.00</b>
<b>Green NM Silver</b>	<b>Next 1,000</b>	<b>\$2.50</b>
<b>LEED-H Gold or Build</b>	<b>First 2,000</b>	<b>\$6.85</b>
<b>Green NM Gold</b>	<b>Next 1,000</b>	<b>\$3.40</b>
<b>LEED-H Platinum or Build</b>	<b>First 2,000</b>	<b>\$9.00</b>
<b>Green NM Emerald</b>	<b>Next 1,000</b>	<b>\$4.45</b>
<b>EPA ENERGY STAR</b>		
<b>Manufactured Housing</b>	<b>Up to 3,000</b>	<b>\$3.00.</b>

F. A person that is a building owner may apply for a certificate of eligibility for the sustainable building tax credit from the energy, minerals and natural resources department after the construction, installation or renovation of the sustainable building is complete. Applications shall be considered in the order received. If the energy, minerals and natural resources department determines that the building owner meets the requirements of this subsection and that the building with respect to which the tax credit application is made meets the requirements of this section as a

sustainable residential building or a sustainable commercial building, the energy, minerals and natural resources department may issue a certificate of eligibility to the building owner, subject to the limitation in Subsection G of this section. The certificate shall include the rating system certification level awarded to the building, the amount of qualified occupied square footage in the building and a calculation of the maximum amount of sustainable building tax credit for which the building owner would be eligible. The energy, minerals and natural resources department may issue rules governing the procedure for administering the provisions of this subsection. If the certification level for the sustainable residential building is awarded on or after January 1, 2007, the energy, minerals and natural resources department may issue a certificate of eligibility to a building owner who is:

(1) the owner of the sustainable residential building at the time the certification level for the building is awarded; or

(2) the subsequent purchaser of a sustainable residential building with respect to which no tax credit has been previously claimed.

G. The energy, minerals and natural resources department may issue a certificate of eligibility only if the total amount of sustainable building tax credits represented by certificates of eligibility issued by the energy, minerals and natural resources department pursuant to this section and pursuant to the Income Tax Act shall not exceed in any calendar year an aggregate amount of one million dollars (\$1,000,000) with respect to sustainable commercial buildings and an aggregate amount of four million dollars (\$4,000,000) with respect to sustainable residential buildings; provided that no more than one million two hundred fifty thousand dollars (\$1,250,000) of the aggregate amount with respect to sustainable residential buildings shall be for manufactured housing. If for any taxable year the energy, minerals and natural resources department determines that the applications for sustainable building tax credits with respect to sustainable residential buildings for that taxable year exceed the aggregate limit set in this section, the energy, minerals and natural resources department may issue certificates of eligibility under the aggregate annual limit for sustainable commercial buildings to owners of sustainable residential buildings that meet the requirements of the energy, minerals and natural resources department and of this section; provided that applications for sustainable building credits for other sustainable commercial buildings total less than the full amount allocated for tax credits for sustainable commercial buildings.

H. Installation of a solar thermal system or a photovoltaic system eligible for the solar market development tax credit pursuant to Section 7-2-18.14 NMSA 1978 may not be used as a component of qualification for the rating system certification level used in determining eligibility for the sustainable building tax credit, unless a solar market development tax credit pursuant to Section 7-2-18.14 NMSA 1978 has not been claimed with respect to that system and the building owner and the taxpayer claiming the sustainable building tax credit certify that such a tax credit will not be claimed with respect to that system.

**I. To be eligible for the sustainable building tax credit, the building owner shall provide to the taxation and revenue department a certificate of eligibility issued by the energy, minerals and natural resources department pursuant to the requirements of Subsection F of this section and any other information the taxation and revenue department may require to determine the amount of the tax credit for which the building owner is eligible.**

**J. If the requirements of this section have been complied with, the department shall issue to the building owner a document granting a sustainable building tax credit. The document shall be numbered for identification and declare its date of issuance and the amount of the tax credit allowed pursuant to this section. The document may be submitted by the building owner with that taxpayer's income tax return, if applicable, or may be sold, exchanged or otherwise transferred to another taxpayer. The parties to such a transaction shall notify the department of the sale, exchange or transfer within ten days of the sale, exchange or transfer.**

**K. If the total approved amount of all sustainable building tax credits for a taxpayer in a taxable year represented by the documents issued pursuant to Subsection J of this section is:**

**(1) less than one hundred thousand dollars(\$100,000), a maximum of twenty-five thousand dollars (\$25,000) shall be applied against the taxpayer's corporate income tax liability for the taxable year for which the credit is approved and the next three subsequent taxable years as needed depending on the amount of credit; or**

**(2) one hundred thousand dollars (\$100,000) or more, increments of twenty-five percent of the total credit amount in each of the four taxable years, including the taxable year for which the credit is approved and the three subsequent taxable years, shall be applied against the taxpayer's corporate income tax liability.**

**L. If the sum of all sustainable building tax credits that can be applied to a taxable year for a taxpayer, calculated according to Paragraph (1) or (2) of Subsection K of this section, exceeds the taxpayer's corporate income tax liability for that taxable year, the excess may be carried forward for a period of up to seven years.**

**M. A taxpayer that otherwise qualifies and claims a sustainable building tax credit with respect to a sustainable building owned by a partnership or other business association of which the taxpayer is a member may claim a credit only in proportion to that taxpayer's interest in the partnership or association. The total credit claimed in the aggregate by all members of the partnership or association with respect to the sustainable building shall not exceed the amount of the credit that could have been claimed by a sole owner of the property.**

**N. The department shall compile an annual report on the sustainable building tax credit created pursuant to this section that shall include the number of taxpayers approved by the department to receive the tax credit, the aggregate amount of tax credits approved and any other information necessary to evaluate the effectiveness of the tax credit. Beginning in 2015**

and every five years thereafter, the department shall compile and present the annual reports to the revenue stabilization and tax policy committee and the legislative finance committee with an analysis of the effectiveness and cost of the tax credit and whether the tax credit is performing the purpose for which it was created.

**O. For the purposes of this section:**

(1) "build green New Mexico rating system" means the certification standards adopted by the homebuilders association of central New Mexico;

(2) "LEED-CI" means the LEED rating system for commercial interiors;

(3) "LEED-CS" means the LEED rating system for the core and shell of buildings;

(4) "LEED-EB" means the LEED rating system for existing buildings;

(5) "LEED gold" means the rating in compliance with, or exceeding, the second-highest rating awarded by the LEED certification process;

(6) "LEED" means the most current leadership in energy and environmental design green building rating system guidelines developed and adopted by the United States green building council;

(7) "LEED-H" means the LEED rating system for homes;

(8) "LEED-NC" means the LEED rating system for new buildings and major renovations;

(9) "LEED platinum" means the rating in compliance with, or exceeding, the highest rating awarded by the LEED certification process;

(10) "LEED silver" means the rating in compliance with, or exceeding, the third-highest rating awarded by the LEED certification process;

(11) "manufactured housing" means a multisectioned home that is:

(a) a manufactured home or modular home;

(b) a single-family dwelling with a heated area of at least thirty-six feet by twenty-four feet and a total area of at least eight hundred sixty-four square feet;

(c) constructed in a factory to the standards of the United States department of housing and urban development, the National Manufactured Housing Construction and Safety Standards Act of 1974 and the Housing and Urban Development Zone Code 2 or New Mexico construction codes up to the date of the unit's construction; and

(d) installed consistent with the Manufactured Housing Act and rules adopted pursuant to that act relating to permanent foundations;

(12) "qualified occupied square footage" means the occupied spaces of the building as determined by:

(a) the United States green building council for those

buildings obtaining LEED certification;

(b) the administrators of the build green New Mexico rating system for those homes obtaining build green New Mexico certification; and

(c) the United States environmental protection agency for ENERGY STAR-certified manufactured homes;

(13) "person" does not include state, local government, public school district or tribal agencies;

(14) "sustainable building" means either a sustainable commercial building or a sustainable residential building;

(15) "sustainable commercial building" means a multifamily dwelling unit, as registered and certified under the LEED-H or build green New Mexico rating system, that is certified by the United States green building council as LEED-H silver or higher or by build green New Mexico as silver or higher and has achieved a home energy rating system index of sixty or lower as developed by the residential energy services network or a building that has been registered and certified under the LEED-NC, LEED-EB, LEED-CS or LEED-CI rating system and that:

(a) is certified by the United States green building council at LEED silver or higher;

(b) achieves any prerequisite for and at least one point related to commissioning under LEED "energy and atmosphere", if included in the applicable rating system; and

(c) has reduced energy consumption, as follows: 1) through 2011, a fifty percent energy reduction will be required based on the national average for that building type as published by the United States department of energy; and beginning January 1, 2012, a sixty percent energy reduction will be required based on the national average for that building type as published by the United States department of energy; and 2) is substantiated by the United States environmental protection agency target finder energy performance results form, dated no sooner than the schematic design phase of development;

(16) "sustainable residential building" means:

(a) a building used as a single-family residence as registered and certified under the build green New Mexico or LEED-H rating systems that: 1) is certified by the United States green building council as LEED-H silver or higher or by build green New Mexico as silver or higher; and 2) has achieved a home energy rating system index of sixty or lower as developed by the residential energy services network; or

(b) manufactured housing that is ENERGY STAR-qualified by the United States environmental protection agency; and

(17) "tribal" means of, belonging to or created by a federally recognized Indian nation, tribe or pueblo.

(Laws 2013, Chapter 92, Section 2; Applicable to Taxable Years on or Before December 31, 2016)

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### 3.4.16.7 - DEFINITIONS

A. “Annual cap” means the annual total amount of the sustainable building tax credit available to taxpayers owning sustainable residential buildings.

B. “Applicant” means a taxpayer that owns a sustainable residential building in New Mexico and that desires to have the department issue a certificate of eligibility for a sustainable building tax credit.

C. “Application package” means the application documents an applicant submits to the division to receive a certificate of eligibility for a sustainable building tax credit.

D. “Build green New Mexico certification” means the verification by a department-approved verifier, that a building project has met certain prerequisites and performance benchmarks or credits within each category of the build green New Mexico rating system resulting in the issuance of a certification document.

E. “Build green New Mexico rating system” means the certification standards adopted by the homebuilders association of central New Mexico.

F. “Certification” means build green New Mexico certification, LEED certification or energy star qualified.

G. “Certificate of eligibility” means the document, with a unique identifying number that specifies the amount and taxable year for the approved sustainable building tax credit.

H. “Certification level” means one of the following:

- (1) silver;
- (2) gold; or
- (3) platinum.

I. “Department” means the energy, minerals and natural resources department.

J. “Division” means the department’s energy conservation and management division.

K. “Energy reduction requirements” means the sustainable residential building has achieved a HERS index of 60 or lower.

L. “Energy star” means a joint program of the United States environmental protection agency and the United States department of energy that qualifies homes based on a predetermined threshold of energy efficiency.

M. “Energy star qualified manufactured home” means a home that an energy star certified plant has certified as being designed, produced and installed in accordance with energy star’s guidelines.

N. “HERS” means home energy rating system as developed by RESNET.

O. “HERS index” means a relative energy use index, where 100 represents the energy use of a home built to a HERS reference house and zero indicates that the proposed home uses no net purchased energy.

P. “LEED” means the most current leadership in energy and environmental design green building rating system guidelines the U. S. green building council developed and adopted.

Q. “LEED certification” means the verification by the U. S. green building council, or a department-approved verifier, that a building project has met certain prerequisites and performance benchmarks or credits within each category of the LEED-H rating system resulting in the issuance of a certification document.

R. “LEED-H” means the LEED rating system for homes.

S. “Manufactured housing” means homes built in a factory meeting the federal manufactured home construction and safety standards, commonly referred to as the HUD Code.

T. “Qualified occupied square footage” means the building’s conditioned spaces as determined per the American national standards institute standard Z765-2003 or as specified by the manufactured housing manufacturer.

U. “Rating system” means the LEED-H rating system, the build green New Mexico rating system or the energy star program for manufactured housing.

V. “RESNET” means the residential energy services network, an industry not-for-profit membership corporation and national standards making body for building energy efficiency rating systems.

W. “Solar market development tax credit” means the personal income tax credit the state of New Mexico issues to a taxpayer for a solar energy system the department has certified.

X. “Sustainable building tax credit” means the corporate income tax credit the state of New Mexico issues to an applicant for a sustainable residential building.

Y. “Sustainable residential building” means:

(1) a building used as a single-family residence that meets the energy reduction requirements and has been awarded:

(a) LEED-H certification at the certification level of silver, gold or platinum; or

(b) build green New Mexico certification at the gold certification level;

(2) a building used as multi-family residences where all dwelling units have met the energy reduction requirements and the building has been awarded:

(a) LEED-H certification at the certification level of silver, gold or platinum; or

(b) build green New Mexico certification at the gold certification level; or

(3) an energy star qualified manufactured home.

Z. “Taxable year” means the calendar year or fiscal year upon the basis of which the net income is computed under the Corporate Income and Franchise Tax Act, NMSA 1978, 7-2A-1 *et seq.*

AA. “Taxpayer” means a corporation subject to the taxes imposed by the Corporate Income and Franchise Tax Act, NMSA 1978, Section 7-2A-1 *et seq.*

BB. “Taxpayer identification number” means an 11-digit number the New Mexico taxation and revenue department issues that indicates that the taxpayer is registered with the taxation and revenue department to pay gross receipts and compensating taxes.

CC. “Verifier” means an entity the department approves to provide certifications for homes under the build green New Mexico or LEED-H rating systems.

[3.4.16.7 NMAC - N, 10-31-07]

### **3.4.16.8 - GENERAL PROVISIONS**

A. Only a taxpayer that is the owner of a building in New Mexico that has been constructed or renovated to be a sustainable residential building and that receives certification on or after January 1, 2007 may receive a certificate of eligibility for a sustainable building tax credit.

B. The annual total amount of the sustainable building tax credit available to taxpayers owning sustainable residential buildings is limited to \$5,000,000. When the \$5,000,000 limit for sustainable residential buildings is reached, based on all certificates of eligibility the department has issued, the department shall:

(1) if part of the eligible sustainable building tax credit is within the annual cap

and part is over the annual cap, issue a certificate of eligibility for the amount under the annual cap for the applicable tax year and issue a certificate of eligibility for the balance for the subsequent tax year; or

(2) if no sustainable building tax credit funds are available, issue a certificate of eligibility for the next subsequent tax year in which funds are available, except for the last taxable year when the sustainable building tax credit is in effect.

C. No more than \$1,250,000 of the \$5,000,000 annual cap is for manufactured housing.

D. In the event of a discrepancy between a requirement of 3.4.16 NMAC and an existing New Mexico taxation and revenue department rule promulgated before 3.4.16 NMAC's adoption, the existing rule governs.

[3.4.16.8 NMAC - N, 10-31-07]

### **3.4.16.9 - VERIFIER ELIGIBILITY**

A. The division reviews the qualifications for verifiers of the build green New Mexico or LEED-H certifications based on the following criteria:

(1) the verifier is independent from the homebuilders or homeowners that may apply for certification;

(2) the verifier has adequate staff and expertise to provide certification services, including:

(a) experience in green home building services;

(b) ability to enlist and serve builders and provide training, consulting and other guidance as necessary;

(c) a method of auditing the certification process to maintain adequate stringency; and

(d) ability to administer the program and report on the certifications, audits and other relevant information the department may request; and

(3) the verifier can identify the geographic area being served; and

(4) the verifier provides a statement that expresses a commitment to promoting energy-efficient green building with the highest standard of excellence.

B. The department approves verifiers after an entity submits a written request to the department that includes documentation on how the entity meets the required criteria. The department notifies the entity of the reasons for disapproving eligibility.

C. The verifier shall notify the division 30 calendar days prior to making changes to its certification process or rating systems.

D. The department may rescind an existing verifier's approval, if it determines that the above criteria are not being met.

(1) The division shall notify the verifier of the proposed rescission in writing. The verifier has the right to request in writing review of the decision to rescind the verifier's approval. The verifier shall file a request for review within 20 calendar days after the division's notice is sent. The verifier shall address the request to the division director and include the reasons that the department should not rescind the verifier's approval. The director shall consider the request. The division director may hold a hearing and appoint a hearing officer to conduct the hearing. The division director shall send a final decision to the verifier within 20 calendar days after receiving the request or the date the hearing is held.

(2) The verifier may appeal in writing to the department's secretary a division



director's decision. The notice of appeal shall include the reasons that the secretary should overturn the division director's decision. The secretary shall consider any appeal from a division director's decision. The verifier shall file the appeal and the reasons for the appeal with the secretary within 14 calendar days of the division director's issuance of the decision. The secretary may hold a hearing and appoint a hearing officer to conduct the hearing. The secretary shall send a final decision to the verifier within 20 calendar days after receiving the request or the date the hearing concludes.

[3.4.16.9 NMAC - N, 10-31-07]

### **3.4.16.10 - APPLICATION FOR THE SUSTAINABLE BUILDING TAX CREDIT**

A. In order to obtain the sustainable building tax credit, a taxpayer shall apply for a certificate of eligibility with the division on a division-developed form. An applicant may obtain an application form from the division.

B. An application package shall include a completed application form and attachments as specified on the application form. The applicant shall submit the application form and required attachments at the same time. An applicant shall submit one application form for each sustainable residential building. The applicant shall submit all material submitted in the application package on 8½ inch by 11 inch paper. If the applicant fails to submit the application form and required attachments at the same time or on 8½ inch by 11 inch paper the division may consider the application incomplete.

C. An applicant shall submit a complete application package to the division no later than 30 days before the end of taxable year for which the applicant seeks the sustainable building tax credit to allow time for approval and issuance of a certificate of eligibility. The division will review application packages it receives after that date for the subsequent taxable year.

D. The completed application form shall consist of the following information:

- (1) the applicant's name, mailing address, telephone number and taxpayer identification number;
- (2) the name of the applicant's authorized representative;
- (3) the ending date of the applicant's taxable year;
- (4) the address of the sustainable residential building, including the property's legal description;
- (5) whether the applicant was the building owner at time of certification or a subsequent purchaser;
- (6) the qualified occupied square footage of the sustainable residential building;
- (7) the rating system under which the sustainable residential building was certified;
- (8) the certification level achieved, if applicable;
- (9) the HERS index, if applicable;
- (10) the date of rating system certification;
- (11) a statement signed and dated by the applicant, which may be a form of electronic signature if approved by the department, agreeing that:
  - (a) all information provided in the application package is true and correct to the best of the applicant's knowledge under penalty of perjury;
  - (b) applicant has read the requirements contained in 3.4.16 NMAC;
  - (c) if an onsite solar system is used to meet the requirements of either the rating system certification level applied for in the sustainable building tax credit or the energy

reduction requirement achieved, the applicant has not applied for and will not apply for a solar market tax credit;

(d) applicant understands that there are annual limits for the sustainable building tax credit;

(e) applicant understands that the division must verify the documentation submitted in the application package before the department issues a certificate of eligibility for a sustainable building tax credit; and

(f) applicant understands that the department issues a certificate of eligibility for the taxable year in which the sustainable residential building was certified or, if the sustainable building tax credit's annual cap has been reached, for the next taxable year in which funds are available; and

(12) a project number the division assigns to the tax credit application.

E. In addition to the application form, the application package shall consist of the following information provided as attachments:

(1) a copy of a deed, property tax bill or ground lease in the applicant's name as of or after the date of certification for the address or legal description of the sustainable residential building;

(2) a copy of the rating system certification form;

(3) a copy of the final certification review checklist that shows the points achieved, if applicable;

(4) a copy of a HERS certificate, from a RESNET (or a rating network that has the same standards as RESNET) accredited HERS provider, using software the internal revenue service lists as eligible for certification of the federal tax credit, showing the HERS index achieved, if applicable; and

(5) other information the department needs to review the building project for the sustainable building tax credit.

[3.4.16.10 NMAC - N, 10-31-07]

### **3.4.16.11 - APPLICATION REVIEW PROCESS**

A. The department considers applications in the order received, according to the day they are received, but not the time of day.

B. The department approves or disapproves an application package following the receipt of the complete application package. The department disapproves an application that is not complete or correct. The department's disapproval letter shall state the reasons why the department disapproved the application. The applicant may resubmit the application package for the disapproved project. The division places the resubmitted application in the review schedule as if it were a new application.

C. The division reviews the application package to calculate the sustainable building tax credit, check accuracy of the applicant's documentation and determine whether the department issues a certificate of eligibility for the sustainable building tax credit.

D. If an onsite solar system is used to meet the requirements of either the certification level applied for in the sustainable building tax credit or the energy reduction requirement achieved, the division verifies that no person has applied for a solar market development tax credit for that solar system. If the division finds that a solar market development tax credit has been approved for that solar system, the division shall disapprove the application for the sustainable building tax credit. The applicant may submit a revised

application package to the division. The division places the resubmitted application in the review schedule as if it were a new application.

E. If the division finds that the application package meets the requirements and a sustainable building tax credit is available, the department issues the certificate of eligibility for a sustainable building tax credit. If a sustainable building tax credit is partially available or not available, the department issues a certificate of eligibility for any amount that is available and a certificate of eligibility for the balance for the next taxable year, until the last taxable year when the sustainable building tax credit is in effect. The notification shall include the taxpayer's contact information, taxpayer identification number, certificate of eligibility number or numbers, the rating system certification level awarded to the building, the amount of qualified occupied square footage in the building, the sustainable building tax credit amount or amounts and the sustainable building tax credit's taxable year or years.

[3.4.16.11 NMAC - N, 10-31-07]

### 3.4.16.12 - CALCULATING THE TAX CREDIT

A. The division calculates the sustainable building tax credit based on the qualified occupied square footage of the sustainable residential building, the rating system under which the applicant achieved certification and the certification level the applicant achieved. The tax credit for various square footages is specified in the chart below:

build green New Mexico gold:	
first 2,000 square feet	equals the qualified square footage less than or equal to 2,000 multiplied by \$4.50; plus
next 1,000 square feet	the qualified square footage greater than 2,000 and less than or equal to 3,000 multiplied by \$2.00
LEED-H Silver:	
first 2,000 square feet	equals the qualified square footage less than or equal to 2,000 multiplied by \$5.00; plus
next 1,000 square feet	the qualified square footage greater than 2,000 and less than or equal to 3,000 multiplied by \$2.50
LEED-H Gold:	
first 2,000 square feet	equals the qualified square footage less than or equal to 2,000 multiplied by \$6.85; plus
next 1,000 square feet	the qualified square footage greater than 2,000 and less than or equal to 3,000 multiplied by \$3.40
LEED-H Platinum:	
first 2,000 square feet	equals the qualified square footage less than or equal to 2,000 multiplied by \$9.00; plus
next 1,000 square feet	the qualified square footage greater than 2,000 and less than or equal to 3,000 multiplied by \$4.45
energy star manufactured housing:	
up to 3,000 square feet	equals the qualified square footage less than or equal to 3,000 multiplied by \$3.00.

B. An applicant may receive both a sustainable building tax credit and a federal tax credit if the applicant is eligible for each tax credit.

C. The department makes the final determination of the amount of the sustainable building tax credit.

[3.4.16.12 NMAC - N, 10-31-07]

### **3.4.16.13 - CLAIMING THE STATE TAX CREDIT**

A. To claim the sustainable building tax credit, an applicant shall submit all certificates of eligibility to the taxation and revenue department within 30 days of the department's issuance, along with a completed form provided by the taxation and revenue department, and any other information the taxation and revenue department requires.

B. Beginning with the taxable year on each certificate of eligibility, the taxation and revenue department will apply 25 percent of the amount on the certificate against the applicant's income tax liability for four years, unless the amount is less than or equal to \$25,000, in which case the taxation and revenue department applies the entire sustainable building tax credit in the taxable year on the certificate.

C. If the amount of the sustainable building tax credit the applicant claims exceeds the applicant's income tax liability, the applicant may carry the excess forward for up to seven consecutive taxable years.

D. A taxpayer claiming a sustainable building tax credit shall not claim a tax credit pursuant to another law for the same sustainable residential building unless the other tax credit is applicable to systems that are unrelated to the sustainable building tax credit. In addition, a taxpayer claiming the sustainable building tax credit shall not claim the credit for the same sustainable building under both the Income Tax Act and the Corporate Income and Franchise Tax Act.

[3.4.16.13 NMAC - N, 10-31-07]

### **3.4.17.7 - DEFINITIONS**

A. "Annual cap" means the annual aggregate amount of the sustainable building tax credit available to taxpayers owning sustainable commercial buildings.

B. "Applicant" means a taxpayer that owns a sustainable commercial building in New Mexico and that desires to have the department issue a certificate of eligibility for a sustainable building tax credit.

C. "Application package" means the application documents an applicant submits to the division to receive a certificate of eligibility for a sustainable building tax credit.

D. "Building project" means a new construction or renovation project that will result in one or more sustainable commercial buildings.

E. "Building type" means the primary use of a building or section of a building as defined in target finder.

F. "Certificate of eligibility" means the document, with a unique identifying number that specifies the amount and taxable year for the approved sustainable building tax credit.

G. "Certification level" means one of the following:

- (1) silver;
- (2) gold; or
- (3) platinum.

H. "Department" means the energy, minerals and natural resources department.

I. "Division" means the department's energy conservation and management division.

- J. “Energy reduction requirements” means:
- (1) through 2011, a 50 percent energy reduction based on the national average for that building type as published by the United States department of energy; and
  - (2) beginning January 1, 2012, a 60 percent energy reduction based on the national average for that building type as published by the United States department of energy.
- K. “LEED” means the most current leadership in energy and environmental design green building rating system guidelines developed and adopted by the U. S. green building council.
- L. “LEED certification” means the U. S. green building council’s verification that a building project has met certain prerequisites and performance benchmarks or credits within each category of a LEED rating system resulting in the issuance of a certification document.
- M. “LEED-CI” means the LEED rating system for commercial interiors.
- N. “LEED-CS” means the LEED rating system for the core and shell of buildings.
- O. “LEED-EB” means the LEED rating system for existing buildings.
- P. “LEED-NC” means the LEED rating system for new buildings and major renovations.
- Q. “LEED rating system” means one of the following:
- (1) LEED-CI;
  - (2) LEED-CS;
  - (3) LEED-EB; or
  - (4) LEED-NC.
- R. “LEED registration” means the notification to the U. S. green building council that a project is pursuing LEED certification.
- S. “Most current” means the LEED rating system available and selected at the time of LEED registration.
- T. “Qualified occupied square footage” means the building’s occupied spaces as determined by the U. S. green building council for those buildings obtaining LEED certification.
- U. “Solar market development tax credit” means the personal income tax credit the state of New Mexico issues to a taxpayer for a solar energy system the department has certified.
- V. “Sustainable building tax credit” means the corporate income tax credit the state of New Mexico issues to an applicant for a sustainable commercial building.
- W. “Sustainable commercial building” means a building that has been registered with and certified by the U.S. green building council under the LEED-NC, LEED-EB, LEED-CS or LEED-CI rating system at the certification level of silver, gold or platinum and that:
- (1) achieves any prerequisite for and at least one point related to commissioning under the “energy and atmosphere” credits of LEED, if included in the applicable rating system; and
  - (2) has met the energy reduction requirements as substantiated by the United States environmental protection agency target finder energy performance results form, dated no sooner than the schematic design phase of development, or an alternative method the division approved pursuant to 3.4.17.13 NMAC.
- X. “Target finder” means the web-based program developed by the United States environmental protection agency to establish an energy goal in kilo British thermal units per square foot per year for predetermined building types.
- Y. “Tax credit request” means the notification to the division that a project is pursuing the sustainable building tax credit.

Z. “Tax credit request package” means the documents an applicant submits to the division for with its tax credit request.

AA. “Taxable year” means the calendar year or fiscal year upon the basis of which the net income is computed under the Corporate Income and Franchise Tax Act, NMSA 1978, 7-2A-1 *et seq.*

BB. “Taxpayer” means a corporation subject to the taxes imposed by the Corporate Income and Franchise Tax Act, NMSA 1978, Section 7-2A-1 *et seq.*

CC. “Taxpayer identification number” means an 11-digit number the New Mexico taxation and revenue department issues that indicates that the taxpayer is registered with the taxation and revenue department to pay gross receipts and compensating taxes.

[3.4.17.7 NMAC - N, 10-31-07]

### **3.4.17.8 - GENERAL PROVISIONS**

A. Only a taxpayer that is the owner of a building in New Mexico that has been constructed or renovated to be a sustainable commercial building and that receives certification on or after January 1, 2007 may receive a certificate of eligibility for a sustainable building tax credit.

B. The annual total amount of the sustainable building tax credit available to taxpayers owning sustainable commercial buildings is limited to \$5,000,000. When the \$5,000,000 limit for sustainable commercial buildings is reached, based on all certificates of eligibility the department has issued, the department shall:

(1) if part of the eligible sustainable building tax credit is within the annual cap and part is over the annual cap, issue a certificate of eligibility for the amount under the annual cap for the applicable taxable year and issue a certificate of eligibility for the balance for the subsequent taxable year; or

(2) if no sustainable building tax credit funds are available, issue a certificate of eligibility for the next subsequent taxable year in which funds are available, except for the last taxable year when the sustainable building tax credit is in effect.

C. In the event of a discrepancy between a requirement of 3.4.17 NMAC and an existing New Mexico taxation and revenue department rule promulgated before 3.4.17 NMAC’s adoption, the existing rule governs.

[3.4.17.8 NMAC - N, 10-31-07]

### **3.4.17.9 - TAX CREDIT REQUEST**

A. An applicant seeking the sustainable building tax credit shall file a completed tax credit request form with the department in order to be eligible for the sustainable building tax credit. An applicant may obtain a tax credit request form from the division. This allows the department to predict the potential amount of the tax credit to be used and allows the applicant to obtain the status of the sustainable building tax credit’s available funds.

B. A tax credit request package shall include a completed tax credit request form and all attachments as specified on the form. The applicant shall submit to the division the tax credit request form and the required attachments at the same time. An applicant shall submit one tax credit request form for each sustainable commercial building. The applicant shall provide all material submitted in the tax credit request package on 8½ inch by 11 inch paper. If the applicant fails to submit the tax credit request form and required attachments at the same time or on 8½ inch by 11 inch paper the division may consider the tax credit request incomplete.

C. An applicant shall submit a tax credit request package to the division after the applicant has registered the proposed sustainable commercial building project with the U. S. green building council for LEED certification and before filing an application package with the division.

D. A complete tax credit request form shall include the following information:

- (1) the applicant's name, mailing address, telephone number and taxpayer identification number;
- (2) the name of the applicant's authorized representative;
- (3) the ending date of the applicant's taxable year;
- (4) that the request is for a corporate income tax credit;
- (5) the email address and an alternative phone number for the applicant's authorized representative, as optional information;
- (6) the property's legal description and, if available, the address of the proposed sustainable commercial building;
- (7) the LEED rating system under which the building project is registered with the U.S. green building council;
- (8) the certification level the applicant is seeking;
- (9) whether the basis of the energy reduction requirement is substantiated through the use of target finder or an alternative method;
- (10) the maximum kilo British thermal units per square foot per year required for the sustainable commercial building to meet the energy reduction requirements for the sustainable building tax credit, broken out by all energy sources and including the percent of use for each energy source;
- (11) the qualified occupied square footage of the sustainable commercial building;
- (12) the estimated date of LEED certification for the building;
- (13) a statement signed and dated by the applicant or the applicant's authorized representative, which may be a form of electronic signature if approved by the department, agreeing that:
  - (a) all information provided in the application package is true and correct to the best of the applicant's knowledge under penalty of perjury;
  - (b) the applicant has read the requirements contained in 3.4.17 NMAC;
  - (c) the applicant understands that there are annual limits for the sustainable building tax credit;
  - (d) the applicant understands that the division's acceptance of the tax credit request package in no way guarantees that the applicant will receive a certificate of eligibility for the sustainable building tax credit;
  - (e) the applicant understands that the tax credit request will expire 30 days after the estimated LEED certification date of the building project unless one of the following occur:
    - (i) the applicant files an application with the division; or
    - (ii) if the estimated LEED certification date for the building project is extended, the applicant notifies the division in writing of a new estimated LEED certification date; and
  - (f) applicant understands that if the tax credit request expires a new tax credit request is required; and
- (14) a project number the division assigns to the tax credit request.

E. The tax credit request package shall consist of the following information provided as attachments:

(1) a copy of the LEED registration form filed with U. S. green building council and the U. S. green building council's confirmation notice;

(2) a copy of the initial LEED checklist that shows the LEED credits and points the applicant is seeking;

(3) documentation of the energy reduction requirement including the following:

(a) the forms from using target finder, including the input form and the results form; or

(b) other documentation that describes how the energy reduction requirement was determined and justifying how this method achieves the sustainable building tax credit requirements (see 3.4.17.13 NMAC for the alternative method approval process);

(4) a copy of a summary project schedule showing major milestones; and

(5) other information the department needs to review the tax credit request package.

[3.4.17.9 NMAC - N, 10-31-07]

#### **3.4.17.10 - TAX CREDIT REQUEST REVIEW PROCESS**

A. The division records tax credit requests in the order received, according to the day they are received, but not the time of day.

B. The division does not accept a tax credit request until the division approves the information the application provided from using target finder or an alternative method of substantiating the energy reduction requirement (see 3.4.17.13 NMAC for the alternative method approval process).

C. The division notifies the applicant, in writing or by email, of any reason for non-acceptance. The division acts on the tax credit request after the applicant provides any additional information the division requests.

D. Upon acceptance of the tax credit request, the division:

(1) notifies the applicant in writing or by email of the calculated sustainable building tax credit based on the information in the tax credit request package;

(2) records the tax credit request information so the potential amounts to be used in the future can be estimated; and

(3) advises the applicant how the applicant may obtain the status of the sustainable building tax credit's available funds.

E. The department denies acceptance of a tax credit request that is not complete or correct. The department's denial letter shall state the reasons why the department denied acceptance of the tax credit request. The applicant may resubmit the tax credit request package for the denied project. The division places the resubmitted tax credit request in the review schedule as if it were a new tax credit request.

[3.4.17.10 NMAC - N, 10-31-07]

#### **3.4.17.11 - APPLICATION FOR THE SUSTAINABLE BUILDING TAX CREDIT**

A. In order to receive a certificate of eligibility for the tax credit, the applicant must submit an application for the sustainable building tax credit after the division has accepted the tax credit request, the building is completed, the applicant has fulfilled all other requirements and the total annual limit for the sustainable building tax credit has not been met. An applicant may



obtain an application form from the division.

B. An application package shall include a completed application form and attachments as specified on the form. The applicant shall submit the application form and required attachments at the same time. An applicant shall submit one application form for each sustainable commercial building. The applicant shall submit all material submitted in the application package on 8½ inch by 11 inch paper. If the applicant fails to submit the application form and required attachments at the same time or on 8½ inch by 11 inch paper the division may consider the application incomplete.

C. An applicant shall submit a complete application package to the division no later than 45 days before the end of taxable year for which the applicant seeks the sustainable building tax credit to allow time for approval and issuance of a certificate of eligibility. The division may review application packages it receives after that date for the subsequent taxable year.

D. The completed application form shall consist of the following information:

(1) the project number the division assigned to the tax credit request for the proposed sustainable commercial building;

(2) the applicant's name, mailing address, telephone number and taxpayer identification number;

(3) the name of the authorized representative of the applicant, if different from the tax credit request form;

(4) the ending date of the applicant's taxable year, if different from the tax credit request form;

(5) the address of the sustainable commercial building, including the property's legal description;

(6) whether the applicant was the building owner at time of certification or a subsequent purchaser;

(7) the LEED rating system under which the sustainable commercial building was certified by the U.S. green building council;

(8) the certification level achieved;

(9) the kilo British thermal units per square foot per year anticipated as demonstrated in the energy model submitted for LEED certification, broken out by all energy sources and including the percent of use for each energy source;

(10) revised documentation of the energy reduction requirement, if the percent of use of any energy source for the energy model is different from the original energy target documentation by more than 10 percent;

(11) the qualified occupied square footage of the sustainable commercial building;

(12) the date of LEED certification; and

(13) a statement signed and dated by the applicant or an authorized representative of the applicant, which may be a form of electronic signature if approved by the department, asserting that:

(a) all information provided in the application package is true and correct to the best of the applicant's knowledge under penalty of perjury;

(b) all inputs for the energy reduction requirements are the same as the inputs for the energy model;

(c) if an onsite solar system is used to meet the requirements of either the LEED certification level applied for in the sustainable building tax credit or the energy reduction requirement achieved, the applicant has not applied for and will not apply for a solar market tax

credit;

(d) applicant understands that there are annual limits in place for the sustainable building tax credit;

(e) applicant understands that the division must verify the documentation submitted in the application package before the department issues a certificate of eligibility for a sustainable building tax credit; and

(f) applicant understands that the department issues a certificate of eligibility for the taxable year in which the sustainable commercial building was certified or if the applicant submitted the application less than 45 days before the end of the taxable year or if the sustainable building tax credit's annual cap has been reached, for the next taxable year in which funds are available.

E. In addition to the application form, the application package shall consist of the following information provided as attachments:

(1) a copy of a warranty deed, property tax bill or ground lease in the applicant's name as of or after the date of LEED certification for the address or legal description of the sustainable commercial building;

(2) a copy of the LEED certification form the U. S. green building council issued;

(3) a copy of the final LEED project info or project summary that shows the building's square footage;

(4) a copy of the final certification review LEED checklist that shows the LEED credits achieved;

(5) a copy of the final LEED optimize energy performance template or templates, signed by a New Mexico licensed design professional, that the applicant submitted for LEED certification including the results of the energy model that shows the kilo British thermal units per square foot per year for the sustainable commercial building;

(6) revised documentation of the energy reduction requirement, if the percent of use of any energy source for the energy model is different from the original energy target documentation by more than 10 percent; and

(7) a copy of the final LEED enhanced commissioning template, if available under the applicable LEED rating system; and

(8) other information the department needs to review the building project for the sustainable building tax credit.

[3.4.17.11 NMAC - N, 10-31-07]

### **3.4.17.12 - APPLICATION REVIEW PROCESS**

A. The department considers applications in the order received, according to the day they are received, but not the time of day.

B. The department approves or disapproves an application package following the receipt of the complete application package.

C. The division reviews the application package to calculate the sustainable building tax credit, check accuracy of the applicant's documentation and determine whether the department issues a certificate of eligibility for the sustainable building tax credit.

D. If an onsite solar system is used to meet the requirements of either the LEED certification level applied for in the sustainable building tax credit or the energy reduction requirement achieved, the division verifies that no person has applied for a solar market development tax credit for that solar system. If the division finds that a solar market

development tax credit has been approved for that solar system, the division disapproves the application for the sustainable building tax credit. The applicant may submit a revised application package to the division. The division places the resubmitted application in the review schedule as if it were a new application.

E. If the division finds that the application package meets the requirements and funds for a sustainable building tax credit are available, the department issues the certificate of eligibility for a sustainable building tax credit. If funds for a sustainable building tax credit are partially available or not available, the department issues a certificate of eligibility for any amount that is available and a certificate of eligibility for the balance for the next taxable year in which funds are available, until the last taxable year when the sustainable building tax credit is in effect. The department provides approval through written notification to the applicant upon the application's completed review. The notification shall include the taxpayer's contact information, taxpayer identification number, certificate of eligibility number or numbers, the sustainable building tax credit amount or amounts and the sustainable building tax credit's taxable year or years.

F. The department disapproves an application that is not complete or correct. The department's disapproval letter shall state the reasons why the department disapproved the application. The applicant may resubmit the application package for the disapproved project. The division places the resubmitted application in the review schedule as if it were a new application.

[3.4.17.12 NMAC - N, 10-31-07]

### **3.4.17.13 - VERIFICATION OF THE ALTERNATIVE METHOD USED FOR THE ENERGY REDUCTION REQUIREMENT**

A. In the event the sustainable commercial building is a building type that is not available in target finder and the applicant uses an alternative method for the energy reduction requirement, the division reviews the submitted documentation. The following information shall be included:

- (1) a narrative describing the methodology used;
- (2) the kilo British thermal units per square foot per year for all buildings, real or modeled, used as a basis of comparison, broken out by all energy sources and including the percent of use for each energy source; and
- (3) all formulas, assumptions, and other explanation necessary to clarify how the kilo British thermal units per square foot per year for this project was derived.

B. The division uses the following criteria to evaluate the alternative method:

- (1) clarity and completeness of the description of the alternative method;
- (2) reasonableness of assumptions and comparisons; and
- (3) thoroughness of justification of the method.

C. If the division rejects an alternative method it notifies the applicant of the reasons for the rejection.

D. The applicant may request that the division obtain the advice of a volunteer review committee of three or more New Mexico registered architects and New Mexico licensed professional mechanical and electrical engineers, chosen by the division, on their assessment of the alternative method, at which time the division may:

- (1) reconsider the decision and accept the alternative method;
- (2) recommend a revised alternative method; or

(3) reaffirm the rejection of the alternative method.

[3.4.17.13 NMAC - N, 10-31-07]

### 3.4.17.14 - CALCULATING THE TAX CREDIT

A. The division calculates the sustainable building tax credit based on the qualified occupied square footage of the sustainable commercial building, the LEED rating system under which the applicant achieved LEED certification and the certification level the applicant achieved. The tax credit for various square footages is specified in the chart below:

LEED-NC Silver:	
first 10,000 square feet	equals the qualified square footage less than or equal to 10,000 multiplied by \$3.50; plus
next 40,000 square feet	the qualified square footage greater than 10,000 and less than or equal to 50,000 multiplied by \$1.75; plus
next 450,000 square feet	the qualified square footage greater than 50,000 and less than or equal to 500,000 multiplied by \$.70
LEED-NC Gold:	
first 10,000 square	equals the qualified square footage less than or equal to 10,000 multiplied by \$4.75; plus
next 40,000 square feet	the qualified square footage greater than 10,000 and less than or equal to 50,000 multiplied by \$2.00; plus
next 450,000 square feet	the qualified square footage greater than 50,000 and less than or equal to 500,000 multiplied by \$1.00
LEED-NC Platinum:	
first 10,000 square feet	equals the qualified square footage less than or equal to 10,000 multiplied by \$6.25; plus
next 40,000 square feet	the qualified square footage greater than 10,000 and less than or equal to 50,000 multiplied by \$3.25; plus
next 450,000 square feet	the qualified square footage greater than 50,000 and less than or equal to 500,000 multiplied by \$2.00
LEED-EB OR LEED-CS Silver:	
first 10,000 square feet	equals the qualified square footage less than or equal to 10,000 multiplied by \$2.50; plus
next 40,000 square feet	the qualified square footage greater than 10,000 and less than or equal to 50,000 multiplied by \$1.25; plus
next 450,000 square feet	the qualified square footage greater than 50,000 and less than or equal to 500,000 multiplied by \$.50
LEED-EB OR LEED-CS Gold:	
first 10,000 square feet	equals the qualified square footage less than or equal to 10,000 multiplied by \$3.35; plus
next 40,000 square feet	the qualified square footage greater than 10,000 and less than or equal to 50,000 multiplied by \$1.40; plus
next 450,000 square feet	the qualified square footage greater than 50,000 and less than or equal to 500,000 multiplied by \$.70
LEED-EB OR LEED-CS Platinum:	

first 10,000 square feet	equals the qualified square footage less than or equal to 10,000 multiplied by \$4.40; plus
next 40,000 square feet	the qualified square footage greater than 10,000 and less than or equal to 50,000 multiplied by \$2.30; plus
next 450,000 square feet	the qualified square footage greater than 50,000 and less than or equal to 500,000 multiplied by \$1.40
<b>LEED-CI Silver:</b>	
first 10,000 square feet	equals the qualified square footage less than or equal to 10,000 multiplied by \$1.40; plus
next 40,000 square feet	the qualified square footage greater than 10,000 and less than or equal to 50,000 multiplied by \$.70; plus
next 450,000 square feet	the qualified square footage greater than 50,000 and less than or equal to 500,000 multiplied by \$.30
<b>LEED-CI Gold:</b>	
first 10,000 square feet	equals the qualified square footage less than or equal to 10,000 multiplied by \$1.90; plus
next 40,000 square feet	the qualified square footage greater than 10,000 and less than or equal to 50,000 multiplied by \$.80; plus
next 450,000 square feet	the qualified square footage greater than 50,000 and less than or equal to 500,000 multiplied by \$.40
<b>LEED-CI Platinum:</b>	
first 10,000 square feet	equals the qualified square footage less than or equal to 10,000 multiplied by \$2.50; plus
next 40,000 square feet	the qualified square footage greater than 10,000 and less than or equal to 50,000 multiplied by \$1.30; plus
next 450,000 square feet	the qualified square footage greater than 50,000 and less than or equal to 500,000 multiplied by \$.80

B. An applicant may receive both a sustainable building tax credit and a federal tax credit if the applicant is eligible for each tax credit.

C. The department makes the final determination of the amount of the sustainable building tax credit.

[3.4.17.14 NMAC - N, 10-31-07]

### **3.4.17.15 - CLAIMING THE STATE TAX CREDIT**

A. To claim the sustainable building tax credit for a given year, an applicant shall submit all certificates of eligibility to the taxation and revenue department prior to the end of that taxable year, along with a completed form provided by the taxation and revenue department, and any other information the taxation and revenue department requires.

B. Beginning with the taxable year on each certificate of eligibility, the taxation and revenue department will apply 25 percent of the amount on the certificate against the applicant's income tax liability for four years, unless the amount is less than or equal to \$25,000, in which case the taxation and revenue department applies the entire sustainable building tax credit in the taxable year on the certificate.

C. If the amount of the sustainable building tax credit the applicant claims exceeds

the applicant's income tax liability, the applicant may carry the excess forward for up to seven consecutive taxable years.

D. A taxpayer claiming a sustainable building tax credit shall not claim a tax credit pursuant to another law for the same sustainable commercial building unless the other tax credit is applicable to systems that are unrelated to the sustainable building tax credit. In addition, a taxpayer claiming the sustainable building tax credit shall not claim the credit for the same sustainable building under both the Income Tax Act and the Corporate Income and Franchise Tax Act.

[3.4.17.15 NMAC - N, 10-31-07]

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**\*\*\* REPEALED EFFECTIVE January 1, 2013  
BY LAWS 2007, CHAPTER 204, SECTION 20 \*\*\***

**7-2A-22. TAX CREDIT--AGRICULTURAL WATER CONSERVATION EXPENSES.--**

*A. A taxpayer may claim a credit against the taxpayer's corporate income tax liability for expenses incurred by the taxpayer for eligible improvements in irrigation systems or water management methods. The credit may be claimed for the taxable year in which the expenses are incurred if the taxpayer:*

*(1) in that year, owned or leased a water right appurtenant to the land on which an eligible improvement was made; and*

*(2) files a New Mexico corporate income tax return for that year.*

*B. The credit provided in this section shall be in the following amounts, not to exceed a maximum annual credit of ten thousand dollars (\$10,000):*

*(1) for expenses incurred from January 1, 2008 until December 31, 2008, an amount equal to thirty-five percent of the incurred expenses; and*

*(2) for expenses incurred on or after January 1, 2009, an amount equal to fifty percent of the incurred expenses.*

*C. As used in this section, "eligible improvement in irrigation systems or water management methods" means an improvement that is:*

*(1) made on or after January 1, 2008;*

*(2) consistent and complies with a water conservation plan approved by the local soil and water conservation district in which the improvement is located; and*

*(3) 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:*

*(a) produce agricultural products;*

*(b) harvest or grow trees; or*

*(c) sustain livestock.*

*D. Taxpayers that are considered for federal income tax purposes as co-owners of the land, or co-owners of a pass-through entity that owns the land, on which an eligible improvement in irrigation systems or water management methods is made may claim the pro rata share of the credit allowed pursuant to this section based on the co-owner's ownership interest. The total of the credits allowed all the taxpayers considered co-owners may not exceed the amount that would have been allowed a sole owner of the land.*

*E. If the allowable tax credit in a taxable year exceeds the corporate income taxes otherwise due from a taxpayer pursuant to the Corporate Income and Franchise Tax Act, or if there are no taxes due pursuant to the Corporate Income and Franchise Tax Act, the taxpayer may carry forward the amount of the credit not used in that year to offset the taxpayer's liability for corporate income taxes pursuant to the Corporate Income and Franchise Tax Act for not more than five consecutive tax years.*

*F. The New Mexico department of agriculture, with the advice of the soil and water conservation commission and with information provided by the state engineer, shall promulgate rules to implement this section, including detailed guidelines to assist the department in determining whether improvements in irrigation systems or water management methods qualify for the credit available under this section.*

*G. A taxpayer claiming the credit shall provide documentary evidence of the amount of water conserved during the period for which the credit is claimed if requested by the department.*

*H. Water conserved due to improvements in irrigation systems or water management methods and for which a credit is claimed shall not be subject to abandonment or forfeiture, nor shall the conserved water be put to consumptive beneficial use.*

*I. As used in this section, "taxpayer" may include a partnership, limited liability corporation or other form of pass-through entity, which may pass the credit provided in this section through to its owners in proportion to their share of ownership.*

*(Laws 2007, Chapter 204, Section 6 – Applicable to Tax Years Beginning January 1, 2008, through January 1, 2013)*

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**3.4.18.7-11 NMAC – Part Expired Effective January 1, 2013**



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**7-2A-23. CREDIT--BLENDED BIODIESEL FUEL.--**

**A. A taxpayer that is liable for payment of the special fuel excise tax pursuant to Subsections A through D of Section 7-16A-2.1 NMSA 1978 and that files a New Mexico corporate income tax return is eligible to claim a credit against corporate income tax liability for each gallon of blended biodiesel fuel on which that person paid the special fuel excise tax in the taxable year or who would have paid the special fuel excise tax in the taxable year but for the deductions allowed pursuant to Subsections B through F of Section 7-16A-10 NMSA 1978 or the treaty exemption for north Atlantic treaty organization use. The credit shall be in the following amounts for the following periods:**

**(1) from January 1, 2007 until December 31, 2010, at a rate of three cents (\$.03) per gallon;**

**(2) from January 1, 2011 until December 31, 2011, at a rate of two cents (\$.02) per gallon; and**

**(3) from January 1, 2012 until December 31, 2012, at a rate of one cent (\$.01) per gallon.**

**B. The tax credit provided by this section may not be claimed with respect to the same blended biodiesel fuel for which a credit has been claimed pursuant to the Income Tax Act or for which a credit or refund has been claimed pursuant to Section 7-16A-13 NMSA 1978.**

**C. A taxpayer that otherwise qualifies for and claims a credit pursuant to this section for blended biodiesel fuel on which special fuel excise tax has been paid by a partnership or other business association of which the taxpayer is a member may claim a credit only in proportion to the taxpayer's interest in the partnership or business association. The total credit claimed in the aggregate by all members of the partnership or business association shall not exceed the amount of credit allowed pursuant to Subsection A of this section.**

**D. The tax credit provided by this section may only be applied against the corporate income tax liability of the person that paid the special fuel excise tax on the blended biodiesel fuel with respect to which the credit is provided or that would have paid the special fuel excise tax but for the deductions allowed pursuant to Subsections B through F of Section 7-16A-10 NMSA 1978 or the treaty exemption for north Atlantic treaty organization use. If the credit exceeds the person's corporate income tax liability for the taxable year in which the credit is granted, the credit may be carried forward for five years.**

**E. A taxpayer claiming a credit pursuant to this section shall provide documentation of eligibility in form and content as determined by the department.**

**F. For the purposes of this section:**

**(1) "biodiesel" means renewable, biodegradable, monoalkyl ester combustible liquid fuel that is derived from agricultural plant oils or animal fats and that meets American society for testing and materials D 6751 standard specification for biodiesel B100 blend stock for distillate fuels;**

**(2) "blended biodiesel fuel" means a diesel fuel that contains at least two percent biodiesel; and**

**(3) "diesel fuel" means any diesel-engine fuel used for the generation of power to propel a motor vehicle.**

**(Laws 2007, Chapter 204, Section 8)**

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**7-2A-24. GEOTHERMAL GROUND-COUPLED HEAT PUMP TAX CREDIT.--**

A. A taxpayer that files a New Mexico corporate income tax return for a taxable year beginning on or after January 1, 2010 and that purchases and installs after January 1, 2010 but before December 31, 2020 a geothermal ground-coupled heat pump in a property owned by the taxpayer may claim against the taxpayer's corporate income tax liability, and the department may allow, a tax credit of up to thirty percent of the purchase and installation costs of the system. The credit provided in this section may be referred to as the "geothermal ground-coupled heat pump tax credit". The total geothermal ground-coupled heat pump tax credit allowed to a taxpayer shall not exceed nine thousand dollars (\$9,000). The department shall allow a geothermal ground-coupled heat pump tax credit only for geothermal ground-coupled heat pumps certified by the energy, minerals and natural resources department.

B. A portion of the geothermal ground-coupled heat pump tax credit that remains unused in a taxable year may be carried forward for a maximum of ten consecutive taxable years following the taxable year in which the credit originates until the credit is fully expended.

C. Prior to July 1, 2010, the energy, minerals and natural resources department shall adopt rules establishing procedures to provide certification of geothermal ground-coupled heat pumps for purposes of obtaining a geothermal ground-coupled heat pump tax credit. The rules shall address technical specifications and requirements relating to safety, building code and standards compliance, minimum system sizes, system applications and lists of eligible components. The energy, minerals and natural resources department may modify the specifications and requirements as necessary to maintain a high level of system quality and performance.

D. The department may allow a maximum annual aggregate of two million dollars (\$2,000,000) in geothermal ground-coupled heat pump tax credits. Applications for the credit shall be considered in the order received by the department.

E. As used in this section, "geothermal ground-coupled heat pump" means a reversible refrigerator device that provides space heating, space cooling, domestic hot water, processed hot water, processed chilled water or any other application where hot air, cool air, hot water or chilled water is required and that utilizes ground water or water circulating through pipes buried in the ground as a condenser in the cooling mode and an evaporator in the heating mode.

(Laws 2009, Chapter 271, Section 2; Applicable to Purchases and Installation Before December 31, 2020)

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**3.4.19.7 - DEFINITIONS**

A. "Annual cap" means the annual aggregate amount of the geothermal ground-

coupled heat pump tax credit available to individual and corporate taxpayers.

B. “Applicant” means a taxpayer or taxpayers that own a geothermal ground-coupled heat pump system in New Mexico and that desires to have the department issue a certificate of eligibility for the geothermal ground-coupled heat pump tax credit.

C. “Application package” means the application document and all attachments that an applicant submits to the division to receive a certificate of eligibility for a geothermal ground-coupled heat pump tax credit.

D. “Certificate of eligibility” means the document, with a unique system certification number, that specifies the amount and taxable year for the approved geothermal ground-coupled heat pump tax credit.

E. “Department” means the energy, minerals and natural resources department.

F. “Division” means the energy, minerals and natural resources department’s energy conservation and management division.

G. “Geothermal ground-coupled heat pump system” means a reversible refrigerator device that provides space heating, space cooling, domestic hot water, processed hot water, processed chilled water or any other application where hot air, cool air, hot water or chilled water is required and that utilizes ground water or water circulating through pipes buried in the ground as a condenser in the cooling mode and an evaporator in the heating mode.

H. “Geothermal ground-coupled heat pump tax credit” means the corporate income tax credit that the taxation and revenue department issues to an applicant for a geothermal ground-coupled heat pump system.

I. “System certification number” means the unique number issued by the department that identifies the certified geothermal ground-coupled heat pump system.

J. “Taxpayer” means a corporation as defined by NMSA 1978, Section 7-2A-2, subject to the tax imposed by the Corporate Income and Franchise Tax Act, NMSA 1978, Section 7-2A-1 *et seq.*

K. “Taxpayer identification number” means an 11-digit number the taxation and revenue department issues that indicates that the taxpayer is registered with the taxation and revenue department to pay gross receipts and compensating taxes.

L. “Tax credit” means the New Mexico state tax credit for geothermal ground-coupled heat pumps as described in 3.4.19 NMAC.

[3.4.19.7 NMAC - N, 09/15/2010]

### **3.4.19.8 - GENERAL PROVISIONS**

A. Only a taxpayer who is the owner of a geothermal ground-coupled heat pump system that is purchased and is installed in a residence, business or agricultural enterprise in New Mexico on or after January 1, 2010, but before December 31, 2020 may receive a certificate of eligibility for a tax credit.

B. Only one application package shall be filed per geothermal ground-coupled heat pump system. If more than one taxpayer owns an interest in the property where the geothermal ground-coupled heat pump system is installed as a member of a partnership or other business association, a taxpayer may only claim a tax credit in proportion to that taxpayer’s interest in the partnership or association. The application package shall specify the interest each taxpayer has in the property. In the event that there is more than one taxpayer that owns an interest in the property where the geothermal ground-coupled heat pump system is installed:

(1) each such taxpayer applying for a tax credit must be identified as an applicant

on the application package;

(2) each such taxpayer applying for a tax credit must provide the required taxpayer information as required by 3.4.19.9 NMAC and the application form;

(3) each such taxpayer applying for a tax credit must sign the application; and

(4) the department shall issue one certificate of eligibility per taxpayer that reflects the amount of the tax credit to which the taxpayer is entitled in accordance with the taxpayer's interest in the property, as set forth in the application.

C. 3.4.19 NMAC applies to geothermal ground-coupled heat pump systems for corporate income tax only; the rules for personal income tax geothermal ground-coupled heat pump system tax credit are at 3.3.32 NMAC.

D. The tax credit certificate may be issued for up to 30 percent of the purchase and installation costs of the geothermal ground-coupled heat pump system but may not exceed \$9,000.

E. The annual cap is \$2,000,000. When the \$2,000,000 annual cap is reached, based on all certificates of eligibility the department has issued, the department shall:

(1) if part of the eligible tax credit is within the annual cap and part is over the annual cap, issue a certificate of eligibility for the amount under the annual cap for the applicable tax year and issue a certificate of eligibility for the balance for the next subsequent tax year in which such tax credits are available; except

(2) if no tax credit funds are available, issue a certificate of eligibility for the next subsequent tax year in which such credits are available, except for the last taxable year when the tax credit is in effect.

[3.4.19.8 NMAC - N, 09/15/2010]

### **3.4.19.9 - APPLICATION**

A. To apply for the tax credit an applicant shall submit a complete application package to the division. An applicant may obtain the tax credit application form and system installation form from the division to submit as part of the package.

B. An application package shall include a completed tax credit application form and written attachments for a geothermal ground-coupled heat pump system. The applicant shall submit the tax credit application form together with all attachments required as a complete application package. An applicant shall submit one application package for each geothermal ground-coupled heat pump system. All material submitted in the application package shall be provided on 8½-inch x 11-inch paper.

C. The completed application form shall include the following information:

(1) the taxpayer's name, mailing address, telephone number and taxpayer identification number;

(2) the address where the geothermal ground-coupled heat pump system is located;

(3) the geothermal ground-coupled heat pump system's type and description;

(4) the date the geothermal ground-coupled heat pump system started continuous operation;

(5) the installer's name, address, telephone number, license category and license number;

(6) the net cost of equipment, materials and labor of the geothermal ground-coupled heat pump system, excluding the expenses and income listed in 3.4.19.13 NMAC;

(7) a statement, signed and dated by the applicant, which signature may be electronic if approved by the department, agreeing that:

- (a) all information provided in the application package is true and correct;
- (b) applicant has read the certification requirements contained in 3.4.19

NMAC;

(c) applicant understands that there are annual aggregate tax credit limits in place for geothermal ground-coupled heat pump systems;

(d) applicant understands that the department must approve the application package before the applicant is eligible for a tax credit;

(e) applicant agrees to make changes the department requires to the geothermal ground-coupled heat pump system for compliance with 3.4.19 NMAC; and

(f) to ensure compliance with 3.4.19 NMAC, applicant agrees to allow the division or its authorized representative to inspect the geothermal ground-coupled heat pump system that is described in the application package at any time after the submission of the application package with not less than five business days notice to the applicant; and

(8) a system certification number the division assigns to the application.

D. The application package shall meet 3.4.19 NMAC's requirements and be materially complete.

E. The application package shall include the following information provided as attachments:

(1) a copy of the most recent property tax bill to the taxpayer for the residence where the geothermal ground-coupled heat pump system is located;

(2) a copy of the invoice of itemized equipment and labor costs for the geothermal ground-coupled heat pump system;

(3) a copy of the geothermal ground-coupled heat pump system's design schematic and technical specifications as described in 3.4.19 NMAC;

(4) a photograph of the geothermal ground-coupled heat pump system after installation is completed;

(5) a completed system installation form;

(6) a completed taxpayer and installer statement, with information about the geothermal ground-coupled heat pump that includes:

(a) manufacturer or supplier of system components and the system components' model numbers;

(b) number of well borings (if applicable);

(c) a description of horizontal trenching (if applicable);

(d) a description of a water source system component (if applicable);

(7) if the system was installed using vertical or horizontal directional boreholes, the applicant shall provide the following information:

(a) drilling operator;

(b) office of the state engineer exploratory permit number and approval date (if required);

(c) drilling method;

(d) borehole diameter;

(e) number of boreholes drilled;

(f) general description of subsurface geology or copies of drillers logs;

(g) depth of the boreholes;

- (h) distance between boreholes;
    - (i) depth to ground water (indicate if ground water not encountered);
    - (j) whether the system is an “open” or “closed” loop design; and
  - (8) if the system was installed using horizontal trenching, the applicant shall provide the following information:
    - (a) length, width and depth of the trench or trenches; and
    - (b) general description of subsurface geology.
  - F. The completed system installation form shall include the following information:
    - (1) printed name of the taxpayer who is identified on the application form;
    - (2) printed name, title and telephone number of the installer who signs the system installation form;
    - (3) printed name, title and telephone number of the building code authority’s authorized representative, if applicable, who approves the system installation form;
    - (4) date on which the geothermal ground-coupled heat pump system installation was complete and ready to operate;
    - (5) a statement that the installer has signed and dated, which may be a form of electronic signature if approved by the department, certifying that:
      - (a) the geothermal ground-coupled heat pump system was installed in full compliance with all applicable federal, state and local government statutes or ordinances, rules or regulations and codes and standards that are in effect at the time of installation;
      - (b) the installer has read 3.4.19 NMAC’s certification requirements;
      - (c) the installed geothermal ground-coupled heat pump system will work properly with regular maintenance; and
      - (d) the installer provided written operations and maintenance instructions to the applicant and posted a one-page summary of these instructions in a sheltered accessible location acceptable to the taxpayer and that is near or at the geothermal ground-coupled heat pump system’s components;
    - (6) documentation of the total geothermal ground-coupled heat pump system size.
  - G. The application form shall request that the applicant provide the following optional information:
    - (1) taxpayer’s email address; and
    - (2) contractor’s email address.
  - H. The application form shall include optional selections where the applicant can indicate interest in allowing the department to take the following actions. Selection of such options by the applicant shall not create in the department an obligation to take such action:
    - (1) adding energy monitoring equipment to the geothermal ground-coupled heat pump system;
    - (2) conducting an analysis of geothermal ground-coupled heat pump system operation and performance; or
    - (3) conducting an analysis of taxpayer’s utility bill records.
- [3.4.19.9 NMAC – N, 09/15/2010]

#### **3.4.19.10 - APPLICATION REVIEW PROCESS**

A. The department shall consider applications in the order received, according to the day they are received, but not the time of day. If the department approves applications received on the same day and the applications would exceed the annual cap, then the department will

divide the available tax credit among those applications on a prorated system cost basis.

B. The division shall review the application package to calculate the tax credit and check accuracy of the applicant's documentation and shall determine whether the department certifies the geothermal ground-coupled heat pump system.

C. If an application package fails to meet a requirement or is materially incomplete, the department shall disapprove the application. The department's disapproval letter shall state the reasons why the department disapproved the application. The applicant may resubmit the application package for the disapproved project. The division shall place the resubmitted application in the review schedule as if it were a new application.

D. If the division finds that the application package meets 3.4.19 NMAC's requirements and a tax credit is available, the department shall certify the applicant's geothermal ground-coupled heat pump system and documents the taxpayer as eligible for a tax credit. If a tax credit is not available in the taxable year of certification of the geothermal ground-coupled heat pump system submitted in the application package, the division shall place the taxpayer on a waiting list for inclusion in the following taxable year, if a tax credit remains available. The department shall provide approval through written notification to the applicant. The notification shall include the taxpayer's contact information, taxpayer identification number, system certification number, net system cost eligible for the tax credit, the tax credit amount and, if applicable waiting list status.

E. The division shall report to the taxation and revenue department the information required to verify, process and distribute each tax credit by providing a copy of the department's approval notification.

[3.4.19.10 NMAC - N, 09/15/2010]

#### **3.4.19.11 - SAFETY, CODES AND STANDARDS**

A. Geothermal ground-coupled heat pump systems that the department may certify shall meet the following minimum requirements:

(1) compliance with the latest adopted version of all applicable federal, state and local government statutes or ordinances, rules or regulations and codes and standards that are in effect at the time that the applicant submits the application package including design, permitting and installation in full compliance with all applicable provisions of the New Mexico Plumbing Code (14.8.2 NMAC), the New Mexico Mechanical Codes (14.9.2 - 5 NMAC), the New Mexico General Construction Building Codes (14.7.2 - 8 NMAC) and any amendments to these codes adopted by a political subdivision that has validly exercised its planning and permitting authority under NMSA 1978, Sections 3-17-6 and 3-18-6; and

(2) compliance with all applicable utility company or heating fuel vendor requirements, if the system being served with a geothermal ground-coupled heat pump system is also served by utility electricity or a heating fuel.

B. The application package shall include the following information concerning building codes:

(1) a statement that the building code authority's authorized representative has signed and dated, which may be a form of electronic signature if approved by the department, that the geothermal ground-coupled heat pump system was installed in full compliance with all applicable codes; or

(2) if the applicant is unable to obtain a signed and dated statement from the building code authority's authorized representative on the system installation form, then the



applicant may provide one of the following instead:

- (a) a photograph or copy of the permit tag clearly identifying the building code authority's authorized representative's signature, the date and the permit number;
- (b) an official document from the building code authority that includes the:
  - (i) agency's name;
  - (ii) authorized representative's name, title, telephone number and signature;
  - (iii) date of authorized representative's signature; and
  - (iv) permit number; or
- (c) a web-based application the building code authority approves.

[3.4.19.11 NMAC - N, 09/15/2010]

### **3.4.19.12 - SYSTEM APPLICATIONS AND LISTS OF ELIGIBLE COMPONENTS**

A. Geothermal ground-coupled heat pump systems that the department may certify shall meet the following requirements:

- (1) be made of new equipment, components and materials;
- (2) have a written minimum two year warranty provided by the contractor on parts, equipment and labor with the following exceptions:
  - (a) the warranty provided by the contractor on each specific piece of equipment shall not exceed the duration and conditions of the warranty provided by the manufacturer of the equipment against defects in materials and workmanship; and
  - (b) the owner of the geothermal ground-coupled heat pump system may bear the actual cost of shipping the product for the repair and replacement;
- (3) be a complete system that collects and distributes geothermal energy to the residence, business or agricultural enterprise in New Mexico that it serves; and
- (4) be a minimum one-ton system size.

B. Geothermal ground-coupled heat pump systems or their portions that the department shall not certify are as follows:

- (1) a system or portion of a system that would be present if the geothermal ground-coupled heat pump system was not installed;
- (2) a system that is not connected to a structure or foundation and does not serve a permanent end use energy load or is not permanently located in New Mexico;
- (3) a system not serving an end use energy load; or
- (4) a system or portion of a system that replaces a system or portion of a system the department has certified in a previous application for a tax credit.

C. System components and installation processes that the department may include in the cost calculation and certify include:

- (1) the system applications of geothermal space heating, geothermal air heating, geothermal process heating, geothermal space cooling or combinations of geothermal system applications, domestic hot water, processed hot water, processed chilled water or any other application where hot air, cool air, hot water or chilled water is required and that utilizes ground water or water circulating through pipes buried in the ground as a condenser in the cooling mode and an evaporator in the heating mode;
- (2) collectors;
- (3) pumps;
- (4) fans;

- (5) storage tanks;
- (6) buffer tanks;
- (7) expansion tanks;
- (8) expansion valves;
- (9) valves;
- (10) “txv” valves;
- (11) three-way valves;
- (12) refrigerant compressors;
- (13) chill water tanks;
- (14) refrigerant reversing valves;
- (15) controllers;
- (16) heat exchangers;
- (17) compressors;
- (18) compressor gas;
- (19) flow center circulators;
- (20) tubing;
- (21) tubing u-bend connections;
- (22) tubing connections and fittings;
- (23) manifolds;
- (24) supply headers;
- (25) expansion metering devices;
- (26) desuperheaters;
- (27) hot water tanks;
- (28) heat exchange refrigerant;
- (29) reverse return headers;
- (30) thermostats;
- (31) evaporators;
- (32) borehole grout;
- (33) borehole backfill sand or other medium;
- (34) turnarounds; and
- (35) air handlers;
- (36) above-ground fluid coolers;
- (37) thermal conductivity testing; and
- (38) all materials and costs associated with vertical well drilling and horizontal

trenching including well casing and tubing.

[3.4.19.12 NMAC - N, 09/15/2010]

### **3.4.19.13 - CALCULATING THE GEOTHERMAL GROUND-COUPLED HEAT PUMP SYSTEM COST**

A. The cost of a geothermal ground-coupled heat pump system the department certifies shall be the cost of acquiring the system but shall not include the following:

- (1) expenses, including but not limited to:
  - (a) unpaid labor or the applicant’s labor;
  - (b) unpaid equipment or materials;
  - (c) land costs or property taxes;
  - (d) costs of structural, surface protection and other functions in building

elements that would be included in building construction if a geothermal ground-coupled heat pump system were not installed;

(e) mortgage, lease or rental costs of the residence, business or agricultural enterprise;

(f) legal and court costs;

(g) research fees or patent search fees;

(h) fees for use permits or variances;

(i) membership fees;

(j) financing costs or loan interest;

(k) marketing, promotional or advertising costs;

(l) repair, operating or maintenance costs;

(m) extended warranty costs;

(n) system visual barrier costs;

(o) adjacent structure modification costs;

(p) vegetation maintenance costs; and

(2) income, including:

(a) payments the installer or other parties provide that reduce the system cost, including rebates, discounts and refunds with the exception of federal, state and local government and utility company incentives;

(b) services, benefits or material goods the installer or other parties provide by the same or separate contract, whether written or verbal; and

(c) other financial incentives provided for geothermal ground-coupled heat pump system installation, if applicable.

B. The division shall make the final determination of the net cost that the department certifies is eligible for a tax credit.

[3.4.19.13 NMAC - N, 09/15/2010]

#### **3.4.19.14 - CLAIMING THE TAX CREDIT**

A. To claim the tax credit, a taxpayer owning a geothermal ground-coupled heat pump system that the department has certified shall submit to the taxation and revenue department a claim, which shall consist of the certificate of eligibility the department issued to the taxpayer, a completed claim form the taxation and revenue department has approved and any other information the taxation and revenue department requires.

B. If the amount of tax credit claimed exceeds the taxpayer's corporate income tax liability, the taxpayer may carry the excess forward for up to 10 consecutive taxable years.

[3.4.19.14 NMAC - N, 09/15/2010]

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**7-2A-25. -- ADVANCED ENERGY CORPORATE INCOME TAX CREDIT.--**

**A.** The tax credit that may be claimed pursuant to this section may be referred to as the "advanced energy corporate income tax credit".

**B.** A taxpayer that holds an interest in a qualified generating facility located in New Mexico and that files a New Mexico corporate income tax return may claim an advanced energy corporate income tax credit in an amount equal to six percent of the eligible generation plant costs of a qualified generating facility, subject to the limitations imposed in this section. The tax credit claimed shall be verified and approved by the department.

**C.** An entity that holds an interest in a qualified generating facility may request a certificate of eligibility from the department of environment to enable the requester to apply for an advanced energy corporate income tax credit. The department of environment:

(1) shall determine if the facility is a qualified generating facility;

(2) shall require that the requester provide the department of environment with the information necessary to assess whether the requester's facility meets the criteria to be a qualified generating facility;

(3) shall issue a certificate to the requester stating that the facility is or is not a qualified generating facility within one hundred eighty days after receiving all information necessary to make a determination;

(4) shall:

(a) issue a schedule of fees in which no fee exceeds one hundred fifty thousand dollars (\$150,000); and

(b) deposit fees collected pursuant to this paragraph in the state air quality permit fund created pursuant to Section 74-2-15 NMSA 1978; and

(5) shall report annually to the appropriate interim legislative committee information that will allow the legislative committee to analyze the effectiveness of the advanced energy tax credits, including the identity of qualified generating facilities, the energy production means used, the amount of emissions identified in this section reduced and removed by those qualified generating facilities and whether any requests for certificates of eligibility could not be approved due to program limits.

**D.** A taxpayer that holds an interest in a qualified generating facility may be allocated the right to claim the advanced energy corporate income tax credit without regard to the taxpayer's relative interest in the qualified generating facility if:

(1) the business entity making the allocation provides notice of the allocation and the taxpayer's interest in the qualified generating facility to the department on forms prescribed by the department;

(2) allocations to the taxpayer and all other taxpayers allocated a right to claim the advanced energy tax credit shall not exceed one hundred

percent of the advanced energy tax credit allowed for the qualified generating facility; and

(3) the taxpayer and all other taxpayers allocated a right to claim the advanced energy tax credits collectively own at least a five percent interest in the qualified generating facility.

E. Upon receipt of the notice of an allocation of the right to claim all or a portion of the advanced energy corporate income tax credit, the department shall verify the allocation due to the recipient.

F. To claim the advanced energy corporate income tax credit, a taxpayer shall submit with the taxpayer's New Mexico corporate income tax return a certificate of eligibility from the department of environment stating that the taxpayer may be eligible for advanced energy tax credits. The taxation and revenue department shall provide credit claim forms. A credit claim form shall accompany any return in which the taxpayer wishes to apply for an approved credit, and the claim shall specify the amount of credit intended to apply to each return. The taxation and revenue department shall determine the amount of advanced energy corporate income tax credit for which the taxpayer may apply.

G. The total amount of all advanced energy tax credits claimed shall not exceed the total amount determined by the department to be allowable pursuant to this section, the Income Tax Act and Section 7-9G-2 NMSA 1978.

H. Any balance of the advanced energy corporate income tax credit that the taxpayer is approved to claim may be claimed by the taxpayer as an advanced energy combined reporting tax credit allowed pursuant to Section 7-9G-2 NMSA 1978. If the advanced energy corporate income tax credit exceeds the amount of the taxpayer's tax liabilities pursuant to the Corporate Income and Franchise Tax Act and Section 7-9G-2 NMSA 1978 in the taxable year in which it is claimed, the balance of the unpaid credit may be carried forward for ten years and claimed as an advanced energy corporate income tax credit or an advanced energy combined reporting tax credit. The advanced energy corporate income tax credit is not refundable.

I. A taxpayer claiming the advanced energy corporate income tax credit pursuant to this section is ineligible for credits pursuant to the Investment Credit Act or any other credit that may be taken pursuant to the Corporate Income and Franchise Tax Act or credits that may be taken against the gross receipts tax, compensating tax or withholding tax for the same expenditures.

J. The aggregate amount of all advanced energy tax credits that may be claimed with respect to a qualified generating facility shall not exceed sixty million dollars (\$60,000,000).

K. As used in this section:

(1) "advanced energy tax credit" means the advanced energy income tax credit, the advanced energy corporate income tax credit and the advanced energy combined reporting tax credit;

(2) "coal-based electric generating facility" means a new or repowered generating facility and an associated coal gasification facility, if

any, that uses coal to generate electricity and that meets the following specifications:

(a) emits the lesser of: 1) what is achievable with the best available control technology; or 2) thirty-five thousandths pound per million British thermal units of sulfur dioxide, twenty-five thousandths pound per million British thermal units of oxides of nitrogen and one hundredth pound per million British thermal units of total particulates in the flue gas;

(b) removes the greater of: 1) what is achievable with the best available control technology; or 2) ninety percent of the mercury from the input fuel;

(c) captures and sequesters or controls carbon dioxide emissions so that by the later of January 1, 2017 or eighteen months after the commercial operation date of the coal-based electric generating facility, no more than one thousand one hundred pounds per megawatt-hour of carbon dioxide is emitted into the atmosphere;

(d) all infrastructure required for sequestration is in place by the later of January 1, 2017 or eighteen months after the commercial operation date of the coal-based electric generating facility;

(e) includes methods and procedures to monitor the disposition of the carbon dioxide captured and sequestered from the coal-based electric generating facility; and

(f) does not exceed a name-plate capacity of seven hundred net megawatts;

(3) "eligible generation plant costs" means expenditures for the development and construction of a qualified generating facility, including permitting; site characterization and assessment; engineering; design; carbon dioxide capture, treatment, compression, transportation and sequestration; site and equipment acquisition; and fuel supply development used directly and exclusively in a qualified generating facility;

(4) "entity" means an individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, limited liability company, limited liability partnership, joint venture, syndicate or other association or a gas, water or electric utility owned or operated by a county or municipality;

(5) "geothermal electric generating facility" means a facility with a name-plate capacity of one megawatt or more that uses geothermal energy to generate electricity, including a facility that captures and provides geothermal energy to a preexisting electric generating facility using other fuels in part;

(6) "interest in a qualified generating facility" means title to a qualified generating facility; a leasehold interest in a qualified generating facility; an ownership interest in a business or entity that is taxed for federal income tax purposes as a partnership that holds title

to or a leasehold interest in a qualified generating facility; or an ownership interest, through one or more intermediate entities that are

each taxed for federal income tax purposes as a partnership, in a business that holds title to or a leasehold interest in a qualified generating facility;

(7) "name-plate capacity" means the maximum rated output of the facility measured as alternating current or the equivalent direct current measurement;

(8) "qualified generating facility" means a facility that begins construction not later than December 31, 2015 and is:

(a) a solar thermal electric generating facility that begins construction on or after July 1, 2007 and that may include an associated renewable energy storage facility;

(b) a solar photovoltaic electric generating facility that begins construction on or after July 1, 2009 and that may include an associated renewable energy storage facility;

(c) a geothermal electric generating facility that begins construction on or after July 1, 2009;

(d) a recycled energy project if that facility begins construction on or after July 1, 2007; or

(e) a new or repowered coal-based electric generating facility and an associated coal gasification facility;

(9) "recycled energy" means energy produced by a generation unit with a name-plate capacity of not more than fifteen megawatts that converts the otherwise lost energy from the exhaust stacks or pipes to electricity without combustion of additional fossil fuel;

(10) "sequester" means to store, or chemically convert, carbon dioxide in a manner that prevents its release into the atmosphere and may include the use of geologic formations and enhanced oil, coalbed methane or natural gas recovery techniques;

(11) "solar photovoltaic electric generating facility" means an electric generating facility with a name-plate capacity of one megawatt or more that uses solar photovoltaic energy to generate electricity; and

(12) "solar thermal electric generating facility" means an electric generating facility with a name-plate capacity of one megawatt or more that uses solar thermal energy to generate electricity, including a facility that captures and provides solar energy to a preexisting electric generating facility using other fuels in part.

(Laws 2009, Chapter 279, Section 2)

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**7-2A-26. AGRICULTURAL BIOMASS CORPORATE INCOME TAX CREDIT.--**

A. A taxpayer that files a New Mexico corporate income tax return for a taxable year beginning on or after January 1, 2011 and ending prior to January 1, 2030 for a dairy or feedlot owned by the taxpayer may claim against the taxpayer's corporate income and franchise tax liability, and the department may allow, a tax credit equal to five dollars (\$5.00) per wet ton of agricultural biomass transported from the taxpayer's dairy or feedlot to a facility that uses agricultural biomass to generate electricity or make biocrude or other liquid or gaseous fuel for commercial use. The credit provided in this section may be referred to as the "agricultural biomass corporate income tax credit".

B. If the requirements of this section have been complied with, the department shall issue to the taxpayer a document granting an agricultural biomass corporate income tax credit. The document shall be numbered for identification and declare its date of issuance and the amount of the tax credit allowed pursuant to this section. The document may be submitted by the taxpayer with that taxpayer's corporate income tax return or may be sold, exchanged or otherwise transferred to another taxpayer. The parties to such a transaction shall notify the department of the sale, exchange or transfer within ten days of the sale, exchange or transfer.

C. A portion of the agricultural biomass corporate income tax credit that remains unused in a taxable year may be carried forward for a maximum of four consecutive taxable years following the taxable year in which the credit originates until the credit is fully expended.

D. The energy, minerals and natural resources department shall adopt rules establishing procedures to provide certification of transportation of agricultural biomass to a qualified facility that uses agricultural biomass to generate electricity or make biocrude or other liquid or gaseous fuel for commercial use for purposes of obtaining an agricultural biomass corporate income tax credit. The rules may be modified as determined necessary by the energy, minerals and natural resources department to determine accurate recording of the quantity of agricultural biomass transported and used for the purpose allowable in this section.

E. A taxpayer that claims an agricultural biomass corporate income tax credit shall not also claim an agricultural biomass income tax credit for transportation of the same agricultural biomass on which the claim for that agricultural biomass income tax credit is based.

F. The department shall limit the annual combined total of all agricultural biomass income tax credits and all agricultural biomass corporate income tax credits allowed to a maximum of five million dollars (\$5,000,000). Applications for the credit shall be considered in the order received by the department.

G. A taxpayer allowed a tax credit pursuant to this section shall report the amount of the credit to the department in a manner required by the department.



**H. The department shall compile an annual report on the agricultural biomass corporate income tax credit that shall include the number of taxpayers approved by the department to receive the credit, the aggregate amount of credits approved and any other information necessary to evaluate the credit. The department shall present the report to the revenue stabilization and tax policy committee and the legislative finance committee with an analysis of the cost of the tax credit.**

**I. As used in this section:**

**(1) "agricultural biomass" means wet manure meeting specifications established by the energy, minerals and natural resources department from either a dairy or feedlot commercial operation;**

**(2) "biocrude" means a nonfossil form of energy that can be transported and refined using existing petroleum refining facilities and that is made from biologically derived feedstocks and other agricultural biomass;**

**(3) "feedlot" means an operation that fattens livestock for market; and**

**(4) "dairy" means a facility that raises livestock for milk production.**

**(Laws 2020, Chapter 20, Section 2)**

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### **3.4.20.7 - DEFINITIONS**

**A.** "Agricultural biomass" means wet manure from either dairy or feedlot commercial operations that meets specifications established by the energy minerals and natural resources department.

**B.** "Agricultural biomass production facility" means a dairy or feedlot that collects animal waste for the purpose of transporting that material to a facility where it will be used to generate electricity, make biocrude or other liquid or gaseous fuel for commercial use.

**C.** "Applicant" means a taxpayer that transports agricultural biomass to a qualified energy producing facility and who desires to have the department issue a certificate of transportation to be used in applying for an agricultural biomass corporate income tax credit from the taxation and revenue department.

**D.** "Application package" means the application documents an applicant submits to the department to receive a certificate of transportation to support an agricultural biomass corporate income tax credit application to the taxation and revenue department.

**E.** "Apron scrape" means biomass collected from concrete feeding aprons or bedding areas.

**F.** "Biocrude" means a non-fossil form of energy that can be transported and refined using existing petroleum refining facilities and that is made from biologically derived feedstocks and other agricultural biomass.

**G.** "Certificate of transportation" means a document issued by the department to the applicant and the taxation and revenue department, enumerated with a unique system certification number and certifying the number of wet tons of agricultural biomass transported to a qualified facility during a specified taxable year. The purpose of this document is to certify the number of wet tons of biomass qualifying for the biomass corporate income tax credit.

**H.** "Corral scrape" means biomass collected from soil bedding or feed areas.

- I.** “Dairy” means a facility that raises livestock for milk production.
  - J.** “Department” means the energy, minerals and natural resources department.
  - K.** “Dry cow” means a fully grown cow that is not currently being milked.
  - L.** “Feedlot” means an operation that fattens livestock for market.
  - M.** “Greenwater” means milking parlor washwater.
  - N.** “Heifer” means a young replacement cow of at least 500 pounds that has not yet been milked.
  - O.** “Livestock” means domestic animals that produce usable agricultural biomass.
  - P.** “Milking cow” means a dairy cow that is lactating and which is milked on a daily basis.
  - Q.** “Qualified facility” or “qualified energy producing facility” means a facility that the department has determined uses agricultural biomass to generate electricity or make biocrude or other liquid or gaseous fuel for commercial use.
  - R.** “Transport” means to convey or arrange for conveyance of biomass by vehicle or pipe from dairy or feedlot to a qualified facility.
  - S.** “Taxable year” means the annual accounting period for purposes of filing corporate income tax returns as defined by the United States internal revenue service.
  - T.** “Taxpayer” means a dairy or feedlot operator or lessee who is liable for payment of gross receipts tax or corporate income tax.
  - U.** “Taxpayer identification number” means an applicant’s 11 digit number issued to the applicant upon registration with the taxation and revenue department to pay gross receipts and corporate taxes.
  - V.** “Wet ton” means 2000 pounds of agricultural biomass qualifying for a certificate of transportation from the department. The number of wet tons qualifying for the certificate of transportation from a dairy during a specific time period is the amount in tons transported from the agricultural biomass production facility calculated by adding:
    - (1) the daily population of milking cows times 49 pounds of biomass per milking cow per day of apron scrape plus 70 pounds of biomass per day per milking cow of corral scrape; plus
    - (2) the daily population of dry cows times 30 pounds of biomass per dry cow per day of apron scrape plus 45 pounds of biomass per day per dry cow of corral scrape; plus
    - (3) the daily population of heifers times 17 pounds of biomass per heifer per day of apron scrape plus 26 pounds of biomass per day per heifer of corral scrape; plus
    - (4) 13 pounds of biomass per milking cow per day pumped from the agricultural biomass production facility as greenwater for each day of the time period. In the event that less than 100 percent of the biomass produced at the agricultural biomass production facility is transported to a qualified facility, the amount of calculated transported biomass qualifying for a certificate of transportation will be proportionally reduced by the percentage of each of the three categories (apron scrape, corral scrape and greenwater) of the biomass not transported to a qualifying facility during the time period.
- [3.4.20.7 NMAC - N, 02/29/2012]

### **3.4.20.8 - GENERAL PROVISIONS**

**A.** The agricultural biomass corporate income tax credit is available to taxpayers filing a corporate income tax return for taxable years beginning on or after January 1, 2011 and ending prior to January 1, 2020. Certificates of transportation pursuant to 3.4.20 NMAC may be

issued by the department for agricultural biomass transported during taxable years beginning on or after January 1, 2011 and ending prior to January 1, 2020.

**B.** The amount of the agricultural biomass income tax credit is calculated at five dollars per wet ton. The maximum amount of the annual combined total of all agricultural biomass personal income tax credits and all agricultural biomass corporate income tax credits allowed is five million dollars.

[3.4.20.8 NMAC - N, 02/29/2012]

### **3.4.20.9 - APPLICATION FOR CERTIFICATE OF TRANSPORTATION**

**A.** To apply for the certificate of transportation, an applicant shall submit a complete application package to the energy conservation and management division of the department within 30 days of the end of the taxable year for which certification is sought. An applicant may obtain the application form from the energy conservation and management division of the department.

**B.** A complete application package shall include a certificate of transportation application form and all required attachments. An applicant shall submit one application package for each dairy or feedlot operation. All material submitted in the application package shall be provided on 8½-inch x 11-inch paper.

**C.** The completed application form shall include the following information and documents:

(1) the applicant's name, mailing address, telephone number, taxpayer identification number and the dates of the taxable year for which application is being made;

(2) the address or public land survey system description of the location of the dairy or feedlot operation, including the county;

(3) a description of the dairy or feedlot operation, descriptions and photographs of equipment used to collect and to transport agricultural biomass;

(4) daily data showing the number of milking cows, dry cows and heifers present at the dairy or feedlot during the specified time period;

(5) a description of the qualified facility to which the biomass was transported, including the name and address of the operator;

(6) dated weigh or volume tickets for each truckload of waste leaving the agricultural biomass production facility, the classification of each truckload as either apron scrape, corral scrape or greenwater, and the destination of each load beginning on the first day of the specified period and no later than the last day of the specified time period for which certification is sought;

(7) totalizing flow meter readings showing the amount of pumped waste or greenwater leaving the agricultural biomass production facility and the amount and destination of any waste diverted from delivery to the qualified facility beginning on the first day of the specified time period and no later than the last day of the specified time period for which certification is sought;

(8) a statement, signed and dated by the applicant, which signature may be electronic if approved by the department, stipulating that:

(a) all information provided in the application package is true and correct;

(b) applicant has read the certification requirements contained in 3.4.20 NMAC;

(c) applicant understands that there are annual aggregate limits to the amount of biomass that will qualify for the agricultural biomass income tax credit;

(d) applicant understands that the department must certify the transportation of the biomass before the applicant is eligible for a tax credit; and

(e) to ensure compliance with 3.4.20 NMAC, applicant agrees that the division or its authorized representative may inspect the dairy or feedlot operation that is described in the application package at any time after the submission of the application package with not less than five business days notice to the applicant; and

(9) a signed statement from the operator of the qualified facility specifying the amount of the biomass received and identifying the dairy or feedlot from which it was received.

**D.** The application package shall meet 3.4.20 NMAC's requirements and be materially complete.

[3.4.20.9 NMAC - N, 02/29/2012]

### **3.4.20.10 - APPLICATION REVIEW PROCESS AND CERTIFICATION**

**A.** The department shall review the application within 30 days of receipt. If the application package complies with 3.4.20 NMAC, the department will determine the number of wet tons of biomass transported, check accuracy of the applicant's documentation and determine whether the department is able to certify that the biomass was transported to a qualified facility.

**B.** If an application package fails to meet a requirement or is not materially complete, the department shall deny the application. The department shall also deny an application from which it is unable to determine from the materials presented in the application package the tonnage transported to or accepted at a qualified facility. The department's disapproval letter shall be issued within 30 days of the receipt of the application and shall state the reasons why the department denied the application.

**C.** If the department finds that the application package meets 3.4.20 NMAC's requirements, the department shall certify that the transportation of the biomass to a qualified facility did occur and so notify the taxpayer and the taxation and revenue department. The certificate shall include the taxpayer's contact information, taxpayer identification number, system certification number and the net amount of biomass eligible for the tax credit.

**D.** If the department denies the application, the applicant shall have 15 days from the date of denial to petition the department secretary for reconsideration. If no petition is received, the denial shall be considered final on the 15<sup>th</sup> day. If a petition for reconsideration is received, it shall contain a statement of reasons the secretary should reconsider the application and any additional or updated material necessary to support that petition. The secretary shall have 15 days to reconsider and approve the amended application, set the matter for an examiner hearing or deny the application. If the secretary has not acted within 15 days of receipt of the petition for reconsideration, the denial of the original application shall be considered final.

[3.4.20.10 NMAC - N, 02/29/2012]

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**7-2A-27.-- VETERAN EMPLOYMENT TAX CREDIT.--**

A. A taxpayer that employs a qualified military veteran in New Mexico is eligible for a credit against the taxpayer's tax liability imposed pursuant to the Corporate Income and Franchise Tax Act in an amount up to one thousand dollars (\$1,000) of the gross wages paid to each qualified military veteran by the taxpayer during the taxable year for which the return is filed. A taxpayer that employs a qualified military veteran for less than the full taxable year is eligible for a credit amount equal to one thousand dollars (\$1,000) multiplied by the fraction of a full year for which the qualified military veteran was employed. The tax credit provided by this section may be referred to as the "veteran employment tax credit".

B. The purpose of the veteran employment tax credit is to encourage the full-time employment of qualified military veterans within two years of discharge from the armed forces of the United States.

C. A taxpayer may claim the veteran employment tax credit provided in this section for each taxable year in which the taxpayer employs one or more qualified military veterans; provided that the taxpayer may not claim the veteran employment tax credit for any individual qualified military veteran for more than one calendar year from the date of hire.

D. That portion of a veteran employment tax credit approved by the department that exceeds a taxpayer's corporate income tax liability in the taxable year in which the credit is claimed shall not be refunded to the taxpayer but may be carried forward for up to three years. The veteran employment tax credit shall not be transferred to another taxpayer.

E. The taxpayer shall submit to the department with respect to each employee for whom the veteran employment tax credit is claimed information required by the department with respect to the veteran's employment by the taxpayer during the taxable year for which the veteran employment tax credit is claimed, including information establishing that the employee is a qualified military veteran that can be used to determine that the employee was not also employed in the same taxable year by another taxpayer claiming a veteran employment tax credit for that employee pursuant to this section or the Income Tax Act.

F. The department shall adopt rules establishing procedures to certify qualified military veterans for purposes of obtaining a veteran employment tax credit. The rules shall ensure that not more than one veteran employment tax credit per qualified military veteran shall be allowed in a taxable year and that the credits allowed per qualified military veteran are limited to a maximum of one year's employment.

G. The department shall compile an annual report for the revenue stabilization and tax policy committee and the legislative finance committee that sets forth the number of taxpayers approved to receive the veteran employment tax credit, the aggregate amount of credits approved and the average and median amounts of credits approved. The department shall

advise those committees in 2015 whether the veteran employment tax credit is performing the purpose for which it was enacted.

H. Acceptance of the veteran employment tax credit is authorization to the department to reveal the amount of the tax credit claimed by the taxpayer and other information from the taxpayer's tax reports as needed to report fully as required by this section to the revenue stabilization and tax policy committee and the legislative finance committee.

I. As used in this section, "qualified military veteran" means an individual who is hired within two years of receipt of an honorable discharge from a branch of the United States military, who works at least forty hours per week during the taxable year for which the veteran employment tax credit is claimed and who was not previously employed by the taxpayer prior to the individual's deployment.

(Laws 2012, Chapter 55, Section 2; Applicable to tax years beginning on or after January 1, 2012 and ending on or before January 1, 2017)

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**7-2A-28.-- NEW SUSTAINABLE BUILDING TAX CREDIT.—**

A. The tax credit provided by this section may be referred to as the "new sustainable building tax credit". The new sustainable building tax credit shall be available for the construction in New Mexico of a sustainable building, 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. The tax credit provided in this section may not be claimed with respect to the same sustainable building for which the new sustainable building tax credit provided in the Income Tax Act has been claimed.

B. The purpose of the new sustainable building tax credit is to encourage the construction of sustainable buildings and the renovation of existing buildings into sustainable buildings.

C. A taxpayer that files a corporate income tax return is eligible to be granted a new sustainable building tax credit by the department if the taxpayer submits a document issued pursuant to Subsection K of this section with the taxpayer's corporate income tax return.

D. For taxable years ending on or before December 31, 2026, the new sustainable building tax credit may be claimed with respect to a sustainable commercial building. The credit shall be calculated based on the certification level the building has achieved in the LEED green building rating system and the amount of qualified occupied square footage in the building, as indicated on the following chart:

LEED Rating Level	Qualified Occupied Square Footage	Tax Credit per Square Foot
LEED-NC Silver	First 10,000	\$3.50
	Next 40,000	\$1.75
	Over 50,000	
	up to 500,000	\$ .70
LEED-NC Gold	First 10,000	\$4.75
	Next 40,000	\$2.00
	Over 50,000	
	up to 500,000	\$1.00
LEED-NC Platinum	First 10,000	\$6.25
	Next 40,000	\$3.25
	Over 50,000	
	up to 500,000	\$2.00
LEED-EB or CS Silver	First 10,000	\$2.50
	Next 40,000	\$1.25
	Over 50,000	
	up to 500,000	\$ .50
LEED-EB or CS Gold	First 10,000	\$3.35

	Next 40,000	\$1.40
	Over 50,000	
	up to 500,000	\$ .70
LEED-EB or CS Platinum	First 10,000	\$4.40
	Next 40,000	\$2.30
	Over 50,000	
	up to 500,000	\$1.40
LEED-CI Silver	First 10,000	\$1.40
	Next 40,000	\$ .70
	Over 50,000	
	up to 500,000	\$ .30
LEED-CI Gold	First 10,000	\$1.90
	Next 40,000	\$ .80
	Over 50,000	
	up to 500,000	\$ .40
LEED-CI Platinum	First 10,000	\$2.50
	Next 40,000	\$1.30
	Over 50,000	
	up to 500,000	\$ .80.

E. For taxable years ending on or before December 31, 2026, the new sustainable building tax credit may be claimed with respect to a sustainable residential building. The credit shall be calculated based on the amount of qualified occupied square footage, as indicated on the following chart:

Rating System/Level	Qualified Occupied Square Footage	Tax Credit per Square Foot
LEED-H Silver or Build Green NM Silver	Up to 2,000	\$3.00
LEED-H Gold or Build Green NM Gold	Up to 2,000	\$4.50
LEED-H Platinum or Build Green NM Emerald	Up to 2,000	\$6.50
Manufactured Housing	Up to 2,000	\$3.00.

F. A person that is a building owner may apply for a certificate of eligibility for the new sustainable building tax credit from the energy, minerals and natural resources department after the construction, installation or renovation of the sustainable building is complete. Applications shall be considered in the order received. If the energy, minerals and natural resources department determines that the building owner meets the requirements of this subsection and that the building with respect to which the tax credit application is made meets the requirements of this section as a sustainable residential building or a sustainable commercial



building, the energy, minerals and natural resources department may issue a certificate of eligibility to the building owner, subject to the limitations in Subsection G of this section. The certificate shall include the rating system certification level awarded to the building, the amount of qualified occupied square footage in the building and a calculation of the maximum amount of new sustainable building tax credit for which the building owner would be eligible. The energy, minerals and natural resources department may issue rules governing the procedure for administering the provisions of this subsection. If the certification level for the sustainable residential building is awarded on or after January 1, 2017, the energy, minerals and natural resources department may issue a certificate of eligibility to a building owner who is:

(1) the owner of the sustainable residential building at the time the certification level for the building is awarded; or

(2) the subsequent purchaser of a sustainable residential building with respect to which no tax credit has been previously claimed.

G. Except as provided in Subsection H of this section, the energy, minerals and natural resources department may issue a certificate of eligibility only if the total amount of new sustainable building tax credits represented by certificates of eligibility issued by the energy, minerals and natural resources department pursuant to this section and pursuant to the Income Tax Act shall not exceed in any calendar year an aggregate amount of:

(1) one million two hundred fifty thousand dollars (\$1,250,000) with respect to sustainable commercial buildings;

(2) three million three hundred seventy-five thousand dollars (\$3,375,000) with respect to sustainable residential buildings that are not manufactured housing; and

(3) three hundred seventy-five thousand dollars (\$375,000) with respect to sustainable residential buildings that are manufactured housing.

H. For any taxable year that the energy, minerals and natural resources department determines that applications for sustainable building tax credits for any type of sustainable building pursuant to Paragraph (1), (2) or (3) of Subsection G of this section are less than the aggregate limit for that type of sustainable building for that taxable year, the energy, minerals and natural resources department shall allow the difference between the aggregate limit and the applications to be added to the aggregate limit of another type of sustainable building for which applications exceeded the aggregate limit for that taxable year. Any excess not used in a taxable year shall not be carried forward to subsequent taxable years.

I. Installation of a solar thermal system or a photovoltaic system eligible for the solar market development tax credit pursuant to Section 7-2-18.14 NMSA 1978 may not be used as a component of qualification for the rating system certification level used in determining eligibility for the new sustainable building tax credit, unless a solar market development tax credit

pursuant to Section 7-2-18.14 NMSA 1978 has not been claimed with respect to that system and the building owner and the taxpayer claiming the new sustainable

building tax credit certify that such a tax credit will not be claimed with respect to that system.

J. To be eligible for the new sustainable building tax credit, the building owner shall provide to the taxation and revenue department a certificate of eligibility issued by the energy, minerals and natural resources department pursuant to the requirements of Subsection F of this section and any other information the taxation and revenue department may require to determine the amount of the tax credit for which the building owner is eligible.

K. If the requirements of this section have been complied with, the department shall issue to the building owner a document granting a new sustainable building tax credit. The document shall be numbered for identification and declare its date of issuance and the amount of the tax credit allowed pursuant to this section. The document may be submitted by the building owner with that taxpayer's income tax return, if applicable, or may be sold, exchanged or otherwise transferred to another taxpayer. The parties to such a transaction shall notify the department of the sale, exchange or transfer within ten days of the sale, exchange or transfer.

L. If the approved amount of a new sustainable building tax credit for a taxpayer in a taxable year represented by a document issued pursuant to Subsection K of this section is:

(1) less than one hundred thousand dollars (\$100,000), a maximum of twenty-five thousand dollars (\$25,000) shall be applied against the taxpayer's corporate income tax liability for the taxable year for which the credit is approved and the next three subsequent taxable years as needed depending on the amount of credit; or

(2) one hundred thousand dollars (\$100,000) or more, increments of twenty-five percent of the total credit amount in each of the four taxable years, including the taxable year for which the credit is approved and the three subsequent taxable years, shall be applied against the taxpayer's corporate income tax liability.

M. If the sum of all new sustainable building tax credits that can be applied to a taxable year for a taxpayer, calculated according to Paragraph (1) or (2) of Subsection L of this section, exceeds the taxpayer's corporate income tax liability for that taxable year, the excess may be carried forward for a period of up to seven years.

N. A taxpayer that otherwise qualifies and claims a new sustainable building tax credit with respect to a sustainable building owned by a partnership or other business association of which the taxpayer is a member may claim a credit only in proportion to that taxpayer's interest in the partnership or association. The total credit claimed in the aggregate by all members of the partnership or association with respect to the sustainable

building shall not exceed the amount of the credit that could have been claimed by a sole owner of the property.

O. The department shall compile an annual report on the new sustainable building tax credit created pursuant to this section that shall include the number of taxpayers approved by the department to receive the tax credit, the aggregate amount of tax credits approved and any other information necessary to evaluate the effectiveness of the tax credit. Beginning in 2019 and every three years thereafter that the credit is in effect, the department shall compile and present the annual reports to the revenue stabilization and tax policy committee and the legislative finance committee with an analysis of the effectiveness and cost of the tax credit and whether the tax credit is performing the purpose for which it was created.

P. For the purposes of this section:

(1) "build green New Mexico rating system" means the certification standards adopted by build green New Mexico in November 2014, which include water conservation standards;

(2) "LEED-CI" means the LEED rating system for commercial interiors;

(3) "LEED-CS" means the LEED rating system for the core and shell of buildings;

(4) "LEED-EB" means the LEED rating system for existing buildings;

(5) "LEED gold" means the rating in compliance with, or exceeding, the second-highest rating awarded by the LEED certification process;

(6) "LEED" means the most current leadership in energy and environmental design green building rating system guidelines developed and adopted by the United States green building council;

(7) "LEED-H" means the LEED rating system for homes;

(8) "LEED-NC" means the LEED rating system for new buildings and major renovations;

(9) "LEED platinum" means the rating in compliance with, or exceeding, the highest rating awarded by the LEED certification process;

(10) "LEED silver" means the rating in compliance with, or exceeding, the third-highest rating awarded by the LEED certification process;

(11) "manufactured housing" means a multisectioned home that is:

(a) a manufactured home or modular home;

(b) a single-family dwelling with a heated area of at least thirty-six feet by twenty-four feet and a total area of at least eight hundred sixty-four square feet;

(c) constructed in a factory to the standards of the United States department of housing and urban development, the National Manufactured Housing Construction and Safety Standards Act of 1974 and

the Housing and Urban Development Zone Code 2 or New Mexico construction codes up to the date of the unit's construction; and

(d) installed consistent with the Manufactured Housing Act and rules adopted pursuant to that act relating to permanent foundations;

(12) "qualified occupied square footage" means the occupied spaces of the building as determined by:

(a) the United States green building council for those buildings obtaining LEED certification;

(b) the administrators of the build green New Mexico rating system for those homes obtaining build green New Mexico certification; and

(c) the United States environmental protection agency for ENERGY STAR-certified manufactured homes;

(13) "person" does not include state, local government, public school district or tribal agencies;

(14) "sustainable building" means either a sustainable commercial building or a sustainable residential building;

(15) "sustainable commercial building" means a multifamily dwelling unit, as registered and certified under the LEED-H or build green New Mexico rating system, that is certified by the United States green building council as LEED-H silver or higher or by build green New Mexico as silver or higher and has achieved a home energy rating system index of sixty or lower as developed by the residential energy services network or a building that has been registered and certified under the LEED-NC, LEED-EB, LEED-CS or LEED-CI rating system and that:

(a) is certified by the United States green building council at LEED silver or higher;

(b) achieves any prerequisite for and at least one point related to commissioning under LEED "energy and atmosphere", if included in the applicable rating system; and

(c) has reduced energy consumption beginning January 1, 2012, by sixty percent based on the national average for that building type as published by the United States department of energy as substantiated by the United States environmental protection agency target finder energy performance results form, dated no sooner than the schematic design phase of development;

(16) "sustainable residential building" means:

(a) a building used as a single-family residence as registered and certified under the build green New Mexico or LEED-H rating systems that: 1) is certified by the United States green building council as LEED-H silver or higher or by build green New Mexico as silver or higher; 2) has achieved a home energy rating system index of sixty or lower as developed by the residential energy services network; 3) has indoor plumbing fixtures and water-using appliances that, on average, have flow rates equal to or lower than the flow rates required for certification by

WaterSense; 4) if landscape area is available at the front of the property, has at least one water line outside the building below the frost line that may be connected to a drip irrigation system; and 5) if landscape area is available at the rear of the property, has at least one water line outside the building below the frost line that may be connected to a drip irrigation system; or

(b) manufactured housing that is ENERGY STAR-qualified by the United States environmental protection agency;

(17) "tribal" means of, belonging to or created by a federally recognized Indian nation, tribe or pueblo; and

(18) "WaterSense" means a program created by the federal environmental protection agency that certifies water-using products that meet the environmental protection agency's criteria for efficiency and performance.

(Laws 2015, Chapter 130, Section 2; Applicable to taxable years beginning on or after January 1, 2017)

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### **3.4.21.7 - DEFINITIONS**

A. "Annual cap" means the annual total amount of the new sustainable building tax credit available to taxpayers owning sustainable residential buildings.

B. "Applicant" means a taxpayer who owns a sustainable residential building in New Mexico and who desires to have the department issue a certificate of eligibility for a new sustainable building tax credit.

C. "Application package" means the documents an applicant submits to the department to apply for a certificate of eligibility for a new sustainable building tax credit.

D. "Build green New Mexico certification" means the verification by a department-approved verifier, that a building project has met certain prerequisites and performance benchmarks or credits within each category of the build green New Mexico rating system resulting in the issuance of a certification document.

E. "Build green New Mexico rating system" means the certification standards adopted by build green New Mexico in November 2014, which includes water conservation standards.

F. "Certification" means build green New Mexico certification, or LEED certification or energy star qualified for manufactured housing.

G. "Certificate of eligibility" means the document, with a unique identifying number that specifies the amount and taxable year and specific physical address for the approved new sustainable building tax credit.

H. "Certification level" means one of the following:

(1) LEED-H silver or build green New Mexico silver;

(2) LEED-H gold or build green New Mexico gold; or

(3) LEED-H platinum or build green New Mexico emerald.

I. "Department" means the energy, minerals and natural resources department.

J. "Division director" means the director of the department's energy conservation and management division.

K. "Energy reduction requirements" means has achieved a HERS index of 60 or lower.

L. "Energy star" means a joint program of the United States (U.S.) environmental protection agency and the U.S. department of energy that qualifies homes based on a predetermined threshold of energy efficiency and other requirements.

**M.** “Energy star qualified manufactured home” means a home that an in state or out of state energy star certified plant has certified as being designed, produced and installed in accordance with energy star’s guidelines.

**N.** “HERS” means home energy rating system as developed by RESNET.

**O.** “HERS index” means a relative energy use index, where 100 represents the energy use of a home built to a HERS reference house and zero indicates that the proposed home uses no net purchased energy.

**P.** “LEED” means the most current mandatory leadership in energy and environmental design green building rating system guidelines developed and adopted by the U.S. green building council.

**Q.** “LEED certification” means the verification by the U.S. green building council, or a department-approved verifier, that a building project has met certain prerequisites and performance benchmarks or credits within each category of the LEED-H rating system resulting in the issuance of a certification document.

**R.** “LEED-H” means the LEED rating system for homes at the time of project registration.

**S.** “Manufactured housing” means a multisectioned home that is:

(1) a manufactured home or modular home;

(2) a single-family dwelling with a heated area of at least 36 feet by 24 feet and a total area of at least 864 square feet;

(3) constructed in a factory to the standards of the U.S. department of housing and urban development, the National Manufactured Housing Construction and Safety Standards Act of 1974 and the housing and urban development zone code 2 or New Mexico construction codes up to the date of the unit’s construction; and

(4) installed consistent with the Manufactured Housing Act and rules adopted pursuant to that act relating to permanent foundations.

**T.** “New sustainable building tax credit” for purposes of 3.4.21 NMAC means the corporate income tax credit the state of New Mexico issues to an applicant for a sustainable residential building.

**U.** “Person” does not include state, local government, public school districts or tribal agencies.

**V.** “Qualified occupied square footage” means the occupied spaces of the building as determined by:

(1) the United States (U.S.) green building council for those buildings obtaining LEED certification; or

(2) the administrators of the build green New Mexico rating system for those homes obtaining build green New Mexico certification; or

(3) the (U.S.) environmental protection agency for energy star certified manufactured homes.

**W.** “Rating system” means the LEED-H rating system, the build green New Mexico rating system or the energy star program for manufactured housing.

**X.** “RESNET” means the residential energy services network, an industry not-for-profit membership corporation and national standards- making body for building energy efficiency rating systems.

**Y.** “Solar market development tax credit” means the personal income tax credit the state of New Mexico issues to a taxpayer for a solar energy system the department has certified.

**Z.** “Sustainable residential building” means:

(1) a building used as a single-family residence as registered and certified under the build green New Mexico or LEED-H rating system that:

(a) is certified by the (U.S.) green building council as LEED-H silver or higher; or by build green New Mexico as silver or higher;

(b) has achieved a home energy rating system index of 60 or lower as developed by the home energy rating services network;

(c) has indoor plumbing fixtures and water-using appliances, that on average, have flow rates equal to or lower than the flow rates required for certification by WaterSense; when plumbing fixtures, plumbing features, and water-using appliances are used that have no known equivalent flow rates to WaterSense labeled products, but in aggregate combined exceed the whole-house consumption of a home with only WaterSense plumbing fixtures, then the water efficiency rating score shall be used to prove the whole-house water consumption is equal to or lower than a home with only plumbing fixtures certified by WaterSense;

(d) if landscape area is available at the front of the property, has at least one water line outside the building below the frost line that may be connected to a drip irrigation system; and

(e) if landscape area is available at the rear of the property, has at least one water line outside the building below the frost line that may be connected to a drip irrigation system; or

(2) manufactured housing that is energy star qualified by the (U.S.) environmental protection agency.

**AA.** “Taxable year” means the calendar year or fiscal year upon the basis of which the net income is computed under the Corporate Income and Franchise Tax Act, Section 7-2A-1 et seq. NMSA 1978.

**BB.** “Taxpayer” means any corporation subject to the taxes imposed by the Corporate Income and Franchise Tax Act, Section 7-2A-1 et seq. NMSA 1978.

**CC.** “Taxpayer identification number” means the taxpayer’s nine digit social security number or the corporation’s nine digit employer identification number.

**DD.** “Tribal” means of, belonging to or created by a federally recognized Indian nation, tribe or pueblo.

**EE.** “Verifier” means an entity the department approves to provide certifications for homes under the build green New Mexico or LEED-H rating systems.

**FF.** “WaterSense” means a program created by the federal environmental protection agency that certifies water-using products that meet the environmental protection agency’s criteria for efficiency and performance.

[3.4.21.7 NMAC - N, 12/30/15]

### **3.4.21.8 - GENERAL PROVISIONS**

**A.** A corporation who is the owner of a building in New Mexico that has been constructed, renovated or manufactured to be a sustainable residential building and that receives certification on or after January 1, 2017 may receive a certificate of eligibility for a new sustainable building tax credit. A subsequent purchaser of a sustainable residential building may receive a certificate if no tax credit has previously been claimed for the building.

**B.** The annual total amount in a calendar year of the new sustainable building tax credit pursuant to the Income Tax Act and the Corporate Income and Franchise Tax Act available to taxpayers owning sustainable residential buildings is limited to \$3,375,000 for sustainable residential buildings that are not manufactured housing. When the \$3,375,000 cap for sustainable residential buildings is reached, based on all certificates of eligibility the department has issued, the department shall:

(1) if part of the eligible new sustainable building tax credit is within the annual cap and part is over the annual cap, issue a certificate of eligibility for the amount under the annual cap for the applicable tax year and issue a certificate of eligibility for the balance for the subsequent tax year; or

(2) the department may issue certificates of eligibility to applicants who meet the requirements for the new sustainable residential buildings tax credit in a taxable year when applications for the new sustainable residential buildings tax credit exceed the annual cap and applications for the new sustainable commercial buildings and manufactured housing tax credits are under the annual cap for that type of sustainable building by March 1 of any year in which the tax credit is in effect; or

(3) if no new sustainable building tax credit funds are available, issue a certificate of eligibility for the next subsequent tax year in which funds are available, except for the last taxable year when the new sustainable building tax credit is in effect.

**C.** There is a \$375,000 annual cap for sustainable residential buildings that are manufactured housing.

**D.** In the event of a discrepancy between a requirement of 3.4.21 NMAC and an existing New Mexico taxation and revenue department rule promulgated before 3.4.21 NMAC's adoption, the existing rule governs.

**E.** All notices and applications required to be submitted to the department under 3.4.21 NMAC shall be submitted to the energy conservation and management division of the department.

[3.4.21.8 NMAC - N, 12/30/15]

### **3.4.21.9 - VERIFIER ELIGIBILITY**

**A.** The department reviews the qualifications for verifiers of the build green New Mexico or LEED-H certifications, which shall be provided annually to the department, based on the following criteria:

(1) the verifier is independent from the homebuilders or homeowners that may apply for certification;

(2) the verifier has adequate staff and expertise to provide certification services, including:

(a) experience in green home building services;

(b) ability to enlist and serve builders and provide training, consulting and other guidance as necessary;

(c) a method of auditing the certification process to maintain adequate stringency; and

(d) ability to administer the program and report on the certifications, audits and other relevant information the department may request;

(3) the verifier can identify the geographic area being served; and



(4) the verifier provides a statement that expresses a commitment to promoting energy and water-efficient green building with the highest standard of excellence.

**B.** The department approves verifiers after an entity submits a written request to the department that includes documentation on how the entity meets the required criteria. The department notifies the entity of the reasons for disapproving eligibility.

**C.** The verifier shall notify the department 30 calendar days prior to making changes to its certification process or rating systems.

**D.** The department may rescind an existing verifier's approval if it determines that the above criteria are not being met. The department notifies the verifier of the reasons for disapproving or rescinding eligibility.

(1) The department shall notify the verifier of the proposed rescission in writing. The verifier has the right to request in writing review of the decision to rescind the verifier's approval. The verifier shall file a request for review within 20 calendar days after the department's notice is sent. The verifier shall address the request to the division director and include the reasons that the department should not rescind the verifier's approval. The director shall consider the request. The division director may hold a hearing and appoint a hearing officer to conduct the hearing. The division director shall send a final decision to the verifier within 20 calendar days after receiving the request or the date the hearing is held.

(2) The verifier may appeal in writing to the department's secretary a division director's decision. The notice of appeal shall include the reasons that the secretary should overturn the division director's decision. The secretary shall consider any appeal from a division director's decision. The verifier shall file the appeal and the reasons for the appeal with the secretary within 14 calendar days of the division director's issuance of the decision. The secretary may hold a hearing and appoint a hearing officer to conduct the hearing. The secretary shall send a final decision to the verifier within 20 calendar days after receiving the request or the date the hearing concludes.

[3.4.21.9 NMAC - N, 12/30/15]

#### **3.4.21.10 - APPLICATION FOR THE NEW SUSTAINABLE BUILDING TAX CREDIT**

**A.** In order to obtain the new sustainable building tax credit, a taxpayer shall apply for a certificate of eligibility with the department on a department-developed form. An applicant may obtain an application form from the department.

**B.** An application package shall include a completed application form and attachments as specified on the application form. The applicant shall submit the application form and required attachments at the same time. An applicant shall submit one application form for each sustainable residential building. The applicant shall submit all material in the application package on 8½ inch by 11 inch paper. If the applicant fails to submit the application form and required attachments at the same time on 8½ inch by 11 inch paper the department may consider the application incomplete.

**C.** An applicant shall submit a complete application package to the department no later than March 1 of the taxable year for which the applicant seeks the new sustainable building tax credit. If an applicant does not submit a complete application package by March 1, any remaining new sustainable residential building tax credit funds under the cap may be used in that taxable year for completed new sustainable commercial buildings or manufactured housing

applications. The department may review application packages it receives after that date for the subsequent calendar year if the tax credit remains in effect.

**D.** The completed application form shall consist of the following information:

(1) the applicant's name, mailing address, telephone number and taxpayer identification number;

(2) the name of the applicant's authorized representative;

(3) the ending date of the applicant's taxable year;

(4) the address of the sustainable residential building, including the property's legal description;

(5) whether the applicant was the building owner at time of certification or a subsequent purchaser;

(6) the qualified occupied square footage of the sustainable residential building;

(7) the rating system under which the sustainable residential building was certified;

(8) the certification level achieved, if applicable;

(9) the HERS index;

(10) documentation that applicant meets water efficiency standards to comply with water efficiency requirements of this program;

(11) the date of rating system certification;

(12) a statement signed and dated by the applicant, which may be a form of electronic signature if approved by the department, agreeing that:

(a) all information provided in the application package is true and correct to the best of the applicant's knowledge under penalty of perjury;

(b) applicant has read the requirements contained in 3.4.21 NMAC;

(c) if an onsite solar system is used to meet the requirements of either the rating system certification level applied for in the new sustainable building tax credit or the energy reduction requirement achieved, the applicant has not applied for and will not apply for a solar market development tax credit;

(d) applicant understands that there are annual caps for the new sustainable building tax credit;

(e) applicant understands that the department must verify the documentation submitted in the application package before the department issues a certificate of eligibility for a new sustainable building tax credit; and

(f) applicant understands that the department issues a certificate of eligibility for the taxable year in which the sustainable residential building was certified or, if the new sustainable building tax credit's annual cap has been reached, for the next taxable year in which funds are available; and

(13) a project number the department assigns to the tax credit application.

**E.** In addition to the application form, the application package shall consist of the following information provided as attachments:

(1) a copy of a deed, property tax bill or ground lease in the applicant's name as of or after the date of certification for the address or legal description of the sustainable residential building;

(2) a copy of the rating system certification form;

(3) a copy of the final certification review checklist that shows the points achieved, if applicable;

(4) a copy of a HERS certificate, from a RESNET (or a rating network that has the same standards as RESNET) accredited HERS provider, using software RESNET lists as eligible for certification of the federal tax credit, showing the building has achieved a HERS index of 60 or lower; and

(5) other information the department needs to review the building project for the new sustainable building tax credit.

[3.4.21.10 NMAC - N, 12/30/15]

#### **3.4.21.11 - APPLICATION REVIEW PROCESS**

**A.** The department considers applications in the order received, according to the day they are received, but not the time of day.

**B.** The department approves or disapproves an application package following the receipt of the complete application package. The department disapproves an application that is not complete or correct. The department's disapproval letter shall state the reasons why the department disapproved the application. The applicant may resubmit the application package for the disapproved project. The department places the resubmitted application in the review schedule as if it were a new application.

**C.** The department reviews the application package to calculate the maximum new sustainable building tax credit, check accuracy of the applicant's documentation and determine whether the department issues a certificate of eligibility for the new sustainable building tax credit.

**D.** If an onsite solar system is used to meet the requirements of either the certification level applied for in the new sustainable building tax credit or the energy reduction requirement achieved, the department verifies that no person has applied for a solar market development tax credit for that solar system. If the department finds that a solar market development tax credit has been approved for that solar system, the department shall disapprove the application for the new sustainable building tax credit. The applicant may submit a revised application package to the department that does not include the electricity projected to be generated by the solar system. The department places the resubmitted application in the review schedule as if it were a new application.

**E.** If the department finds that the application package meets the requirements and a new sustainable building tax credit is available, the department issues the certificate of eligibility for a new sustainable building tax credit. If a new sustainable building tax credit is partially available or not available, the department issues a certificate of eligibility for any amount that is available and a certificate of eligibility for the balance for the next taxable year, until the last taxable year when the new sustainable building tax credit is in effect. The notification shall include the taxpayer's contact information, taxpayer identification number, certificate of eligibility number or numbers, the rating system certification level awarded to the building, the amount of qualified occupied square footage in the building, the new sustainable building tax credit amount or amounts and the new sustainable building tax credit's taxable year or years.

[3.4.21.11 NMAC - N, 12/30/15]

#### **3.4.21.12 - CALCULATING THE TAX CREDIT**

**A.** The department calculates the maximum new sustainable building tax credit based on the qualified occupied square footage of the sustainable residential building, the rating system under which the applicant achieved certification and the certification level the applicant achieved. The tax credit for various square footages is specified in the chart below:

LEED-H silver or build green New Mexico silver:	
up to 2,000 square feet	equals the qualified square footage less than or equal to 2,000 multiplied by\$3.00
LEED-H gold or build green New Mexico gold:	
up to 2,000 square feet	equals the qualified square footage less than or equal to 2,000 multiplied by\$4.50
LEED-H platinum or build green New Mexico emerald:	
up to 2,000 square feet	equals the qualified square footage less than or equal to 2,000 multiplied by\$6.50
energy star manufactured housing:	
up to 2,000 square feet	equals the qualified square footage less than or equal to 2,000 multiplied by\$3.00.

**B.** The taxation and revenue department makes the final determination of the amount of the new sustainable building tax credit.

[3.4.21.12 NMAC - N, 12/30/15]

### **3.4.21.13 - CLAIMING THE STATE TAX CREDIT**

To claim the new sustainable building tax credit, an applicant shall submit all certificates of eligibility to the taxation and revenue department within 30 days of the department's issuance, along with a completed form provided by the taxation and revenue department, and any other information the taxation and revenue department requires.

[3.4.21.13 NMAC - N, 12/30/15]

### **3.4.22.7 - DEFINITIONS**

**A.** "Annual cap" means the annual aggregate amount of the new sustainable building tax credit available to taxpayers owning sustainable commercial buildings.

**B.** "Applicant" means a taxpayer that owns a sustainable commercial building in New Mexico and who desires to have the department issue a certificate of eligibility for a new sustainable building tax credit.

**C.** "Application package" means the documents an applicant submits to the department to apply for a certificate of eligibility for a new sustainable building tax credit.

**D.** "Build green New Mexico certification" means the verification by a department-approved verifier, that a building project has met certain prerequisites and performance benchmarks or credits within each category of the build green New Mexico rating system resulting in the issuance of a certification document.

**E.** "Build green New Mexico rating system" means the certification standards adopted by the homebuilders association of central New Mexico.

**F.** "Building project" means a new construction or renovation project that will result in one or more sustainable commercial buildings.

**G.** "Building type" means the primary use of a building or section of a building as defined in target finder.

**H.** “Certificate of eligibility” means the document, with a unique identifying number that specifies the amount and taxable year and specific physical address for the approved new sustainable building tax credit.

**I.** “Certification level” means one of the following:

- (1) LEED-H silver or build green New Mexico silver;
- (2) LEED-H gold or build green New Mexico gold; or
- (3) LEED-H platinum or build green New Mexico emerald.

**J.** “Department” means the energy, minerals and natural resources department.

**K.** “Division director” means the director of the department’s energy conservation and management division.

**L.** “Energy reduction requirements means”:

(1) for a sustainable commercial building that is not a multifamily dwelling unit means beginning January 1, 2012, a sixty percent energy reduction based on the national average for that building type as published by the United States (U.S.) department of energy;

(2) for a multifamily dwelling unit means that it has achieved a home energy rating system index of 60 or lower as developed by the residential energy services network.

**M.** “HERS” means home energy rating system as developed by RESNET.

**N.** “HERS index” means a relative energy use index, where 100 represents the energy use of a home built to a HERS reference house and zero indicates that the proposed home uses no net purchased energy.

**O.** “LEED” means the most current mandatory leadership in energy and environmental design green building rating system guidelines developed and adopted by the U.S. green building council.

**P.** “LEED certification” means the U.S. green building council’s verification that a building project has met certain prerequisites and performance benchmarks or credits within each category of a LEED rating system resulting in the issuance of a certification document.

**Q.** “LEED-CI” means the LEED rating system for commercial interiors.

**R.** “LEED-CS” means the LEED rating system for the core and shell of buildings.

**S.** “LEED-EB” means the LEED rating system for existing buildings.

**T.** “LEED-H” means the LEED rating system for homes at the time of project registration.

**U.** “LEED-NC” means the LEED rating system for new buildings and major renovations.

**V.** “LEED rating system” means one of the following:

- (1) LEED-CI;
- (2) LEED-CS;
- (3) LEED-EB;
- (4) LEED-H; or
- (5) LEED-NC.

**W.** “LEED registration” means the notification to the U.S. green building council that a project is pursuing LEED certification.

**X.** “New sustainable building tax credit” for the purposes of 3.4.22 NMAC means the income tax credit the state of New Mexico issues to an applicant for a sustainable building.

**Y.** “Person” does not include state, local government, public school districts or tribal agencies.

**Z.** “Qualified occupied square footage” means the occupied spaces of the building as determined by the U. S. green building council for those buildings obtaining LEED certification

or the administrators of the build green New Mexico rating system for those homes obtaining build green New Mexico certification.

**AA.** “RESNET” means the residential energy services network, an industry not-for-profit membership corporation and national standards making body for building energy efficiency rating systems.

**BB.** “Solar market development tax credit” means the personal income tax credit the state of New Mexico issues to a taxpayer for a solar energy system the department has certified.

**CC.** “Sustainable commercial building” means:

(1) a multifamily dwelling unit, as registered and certified under the LEED-H or build green New Mexico rating system, that is certified by the U.S. green building council as LEED-H silver or higher and has achieved a home energy rating system index of 60 or lower as developed by the residential energy services network or

(2) a building that has been registered and certified under the LEED-NC, LEED-EB, LEEDCS or LEED-CI rating system and that:

(a) is certified by the U.S. green building council at LEED silver or higher;

(b) achieves any prerequisite for and at least one point related to commissioning under LEED energy and atmosphere, if included in the applicable rating system; and

(c) has reduced energy consumption beginning January 1, 2012, by sixty percent based on the national average for that building type as published by the U.S. department of energy as substantiated by the U.S. environmental protection agency target finder energy performance results form, dated no sooner than the schematic design phase of development.

**DD.** “Target finder” means the web-based program developed by the U.S. environmental protection agency to establish an energy goal in kilo British thermal units per square foot per year for predetermined building types.

**EE.** “Taxable year” means the calendar year or fiscal year upon the basis of which the net income is computed under the Corporate Income and Franchise Tax Act, Section 7-2A-1 *et seq.* NMSA 1978.

**FF.** “Taxpayer” means any corporation subject to the taxes imposed by the Corporate Income and Franchise Tax Act, Section 7-2A-2 *et seq.* NMSA 1978.

**GG.** “Taxpayer identification number” means the corporation’s nine digit employer identification number.

**HH.** “Tribal” means of, belonging to or created by a federally recognized Indian nation, tribe or pueblo.

**II.** “Verifier” means an entity the department approves to provide certification for homes under the build green New Mexico or LEED-H rating systems.

[3.4.22.7 NMAC - Rp, 3.4.22.7 NMAC, 1-1-14]

### **3.4.22.8 - GENERAL PROVISIONS**

**A.** A corporation that is the owner of a building in New Mexico that has been constructed or renovated to be a sustainable commercial building and that receives certification on or after the effective date of the adoption of 3.4.22 NMAC may receive a certificate of eligibility for a new sustainable building tax credit.

**B.** The total amount in a calendar year of the new sustainable building tax credit available pursuant to the Income Tax Act and the Corporate Income and Franchise Tax Act to taxpayers

owning sustainable commercial buildings is limited to \$1,250,000. When the \$1,250,000 limit for sustainable commercial buildings is reached, based on all certificates of eligibility the department has issued, the department shall:

(1) if part of the eligible new sustainable building tax credit is within the annual cap and part is over the annual cap, issue a certificate of eligibility for the amount under the annual cap for the applicable tax year and issue a certificate of eligibility for the balance for the subsequent tax year; or

(2) if no new sustainable building tax credit funds are available, issue a certificate of eligibility for the next subsequent tax year in which funds are available, except for the last taxable year when the new sustainable building tax credit is in effect.

C. The department may issue certificates of eligibility to applicants who meet the requirements for the new sustainable commercial buildings tax credit in a taxable year when applications for the new sustainable commercial buildings tax credits exceed the annual cap and applications for the new sustainable residential buildings or manufactured housing tax credits are under the annual cap for that type of sustainable building by March 1 of any year in which the tax credit is in effect.

D. In the event of a discrepancy between a requirement of 3.4.22 NMAC and an existing New Mexico taxation and revenue department rule promulgated before 3.4.22 NMAC's adoption, the existing rule governs.

E. All notice and applications required to be submitted to the department under 3.3.35 NMAC shall be submitted to the energy conservation and management division of the department.

[3.4.22.8 NMAC - N, 12/30/15]

#### **3.4.22.9 - VERIFIER ELIGIBILITY**

A. The department reviews the qualification for verifiers of the build green New Mexico or LEED-H certifications, which shall be provided annually to the department, based on the following criteria:

(1) the verifier is independent from the homebuilders or homeowners that may apply for certification;

(2) the verifier has adequate staff and expertise to provide certification services, including;

(a) experience in green home building services;

(b) ability to enlist and serve builders and provide training, consulting and other guidance as necessary;

(c) a method of auditing the certification process to maintain adequate stringency; and

(d) ability to administer the program and report on the certifications, audits and other relevant information the department may request;

(3) the verifier can identify the geographic area being served; and

(4) the verifier provides a statement that expresses a commitment to promoting energy efficient green building with the highest standard of excellence.

B. The department approves verifiers after an entity submits a written request to the department that includes documentation on how the entity meets the required criteria. The department notifies the entity of the reasons for disapproving eligibility.

C. The verifier shall notify the department 30 calendar days prior to making changes to its certification process or rating systems.

D. The department may rescind an existing verifier's approval if it determines that the above criteria are not being met. The department notifies the verifier of the reasons for disapproving or rescinding eligibility.

(1) The department shall notify the verifier of the proposed rescission in writing. The verifier has the right to request in writing review of the decision to rescind the verifier's approval. The verifier shall file a request for review within 20 calendar days after the department's notice is sent. The verifier shall address the request to the division director and include the reasons that the department should not rescind the verifier's approval. The division director shall consider the request. The division director may hold a hearing and appoint a hearing officer to conduct the hearing. The division director shall send a final decision to the verifier within 20 calendar days after receiving the request or the date the hearing is held.

(2) The verifier may appeal in writing to the department's secretary a division director's decision. The notice of appeal shall include the reasons that the secretary should overturn the division director's decision. The secretary shall consider any appeal from a division director's decision. The verifier shall file the appeal and the reasons for the appeal with the secretary within 14 calendar days of the division director's issuance of the decision. The secretary may hold a hearing and appoint a hearing officer to conduct the hearing. The secretary shall send a final decision to the verifier within 20 calendar days after receiving the request or the date the hearing concludes.

[3.4.22.9 NMAC- N, 12/30/15]

#### **3.4.22.10 - APPLICATION FOR THE NEW SUSTAINABLE BUILDING TAX CREDIT**

A. In order to receive a certificate of eligibility for the tax credit, the applicant must submit an application for the new sustainable building tax credit after the building is completed, the applicant has fulfilled all other requirements and the total annual cap for the new sustainable building tax credit has not been met. An applicant may obtain an application form from the department.

B. An application package shall include a completed application form and attachments as specified on the form. The applicant shall submit the application form and required attachments at the same time. An applicant shall submit one application form for each sustainable commercial building. The applicant shall submit all material in the application package on 8½ inch by 11 inch paper. If the applicant fails to submit the application form and required attachments at the same time on 8½ inch by 11 inch paper, the department may consider the application incomplete.

C. An applicant shall submit a complete application package to the division no later than March 1 of the taxable year for which the applicant seeks the new sustainable building tax credit. If an applicant does not submit a complete application package by March 1, any remaining new sustainable commercial building tax credit funds under the cap may be used in that taxable year for completed new sustainable residential buildings or manufactured housing applications. The division may review application packages it receives after that date for the subsequent calendar year if the tax credit remains in effect.

D. The completed application form shall consist of the following information:



(1) the applicant's name, mailing address, telephone number and taxpayer identification number;

(2) the name of the authorized representative of the applicant, if different from the tax credit request form;

(3) the ending date of the applicant's taxable year;

(4) the address of the sustainable commercial building, including the property's legal description;

(5) whether the applicant was the building owner at time of certification or is a subsequent purchaser;

(6) the rating system under which the sustainable commercial building was certified;

(7) the certification level achieved;

(8) for sustainable commercial buildings that are not multifamily dwelling units, the kilo British thermal units per square foot per year anticipated as demonstrated in the energy model submitted for LEED certification, broken out by all energy sources and including the percent of use for each energy source;

(9) for sustainable commercial buildings that are not multifamily dwelling units, revised documentation of the energy reduction requirement, if the percent of use of any energy source for the energy model is different from the original energy target documentation by more than ten percent;

(10) the qualified occupied square footage of the sustainable commercial building;

(11) the date of certification;

(12) for multifamily dwelling units, the HERS index; and

(13) a statement signed and dated by the applicant or an authorized representative of the applicant, which may be a form of electronic signature if approved by the department, asserting that:

(a) all information provided in the application package is true and correct to the best of the applicant's knowledge under penalty of perjury;

(b) all inputs for the energy reduction requirements are the same as the inputs for the energy model;

(c) if an onsite solar system is used to meet the requirements of either the certification level applied for in the new sustainable building tax credit or the energy reduction requirement achieved, the applicant has not applied for and will not apply for a solar market development tax credit;

(d) applicant understands that there are annual caps in place for the new sustainable building tax credit;

(e) applicant understands that the department must verify the documentation submitted in the application package before the department issues a certificate of eligibility for a new sustainable building tax credit; and

(f) applicant understands that the department issues a certificate of eligibility for the tax year in which the sustainable commercial building was certified or if the applicant submitted the application after March 1 or the new sustainable building tax credit's annual cap has been reached for the next tax year in which funds are available.

**E.** In addition to the application form, the application package shall consist of the following information provided as attachments:

(1) a copy of a current warranty deed, property tax bill or ground lease in the applicant's name as of or after the date of certification for the address or legal description of the sustainable commercial building;

(2) a copy of the rating system certification form;

(3) a copy of the final LEED project info or project summary that shows the building's square footage;

(4) a copy of the final certification review LEED checklist that shows the LEED credits achieved or the build green New Mexico final certification review checklist;

(5) for sustainable commercial buildings that are not multifamily dwelling units, a copy of the final LEED optimize energy performance template or templates, signed by a New Mexico licensed design professional, that the applicant submitted for LEED certification including the results of the energy model that shows the kilo British thermal units per square foot per year for the sustainable commercial building;

(6) for sustainable commercial buildings are not multifamily dwelling units, revised documentation of the energy reduction requirement, if the percent of use of any energy source for the energy model is different from the original energy target documentation by more than ten percent; and

(7) a copy of the final LEED enhanced commissioning template, if available under the applicable LEED rating system;

(8) for multifamily dwelling units, a copy of a HERS certificate from a RESNET (or a rating network that has the same standards as RESNET) accredited HERS provider, using software the internal revenue service lists as eligible for certification of the federal tax credit, showing the building has achieved a HERS index of 60 or lower; and

(9) other information the department needs to review the building project for the new sustainable building tax credit.

[3.4.22.10 NMAC - N, 12/30/15]

#### **3.4.22.11 - APPLICATION REVIEW PROCESS**

**A.** The department considers applications in the order received, according to the day they are received, but not the time of day.

**B.** The department approves or disapproves an application package following the receipt of the complete application package.

**C.** The department reviews the application package to calculate the maximum new sustainable building tax credit, check accuracy of the applicant's documentation and determine whether the department issues a certificate of eligibility for the new sustainable building tax credit.

**D.** If an onsite solar system is used to meet the requirements of either the certification level applied for in the new sustainable building tax credit or the energy reduction requirement achieved, the department verifies that no person has applied for a solar market development tax credit for that solar system. If the department finds that a solar market development tax credit has been approved for that solar system, the department disapproves the application for the new sustainable building tax credit. The applicant may submit a revised application package to the division that excludes electricity projected to be generated by the solar system. The department places the resubmitted application in the review schedule as if it were a new application.

**E.** If the department finds that the application package meets the requirements and funds for a new sustainable building tax credit are available, the department issues the certificate of

eligibility for a new sustainable building tax credit. If funds for a new sustainable building tax credit are partially available or not available, the department issues a certificate of eligibility for any amount that is available and a certificate of eligibility for the balance for the next taxable year in which funds are available, until the last taxable year when the new sustainable building tax credit is in effect. The department provides approval through written notification to the applicant upon the application's completed review. The notification shall include the taxpayer's contact information, taxpayer identification number, certificate of eligibility number or numbers, the rating system certification level awarded to the building, the amount of qualified occupied square footage in the building, the new sustainable building tax credit maximum amount or amounts and the new sustainable building tax credit's taxable year or years.

**F.** The department disapproves an application that is not complete or correct. The department's disapproval letter shall state the reasons why the department disapproved the application. The applicant may resubmit the application package for the disapproved project. The department places the resubmitted application in the review schedule as if it were a new application.

[3.4.22.11 NMAC - N, 12/30/15]

#### **3.4.22.12 - VERIFICATION OF THE ALTERNATIVE METHOD USED FOR THE ENERGY REDUCTION REQUIREMENT**

**A.** In the event the sustainable commercial building is a building type that is not available in target finder and the applicant uses an alternative method for the energy reduction requirement, the department reviews the submitted documentation. The following information shall be included:

- (1) a narrative describing the methodology used;
- (2) the kilo British thermal units per square foot per year for all buildings, real or modeled, used as a basis of comparison, broken out by all energy sources and including the percent of use for each energy source; and
- (3) all formulas, assumptions, and other explanation necessary to clarify how the kilo British thermal units per square foot per year for this project was derived.

**B.** The department uses the following criteria to evaluate the alternative method:

- (1) clarity and completeness of the description of the alternative method;
- (2) reasonableness of assumptions and comparisons; and
- (3) thoroughness of justification of the method.

**C.** If the department rejects an alternative method it notifies the applicant of the reasons for the rejection.

**D.** The applicant may request that the department obtain the advice of a volunteer review committee of three or more New Mexico registered architects and New Mexico licensed professional mechanical and electrical engineers, chosen by the division, on their assessment of the alternative method, at which time the department may:

- (1) reconsider the decision and accept the alternative method;
- (2) recommend a revised alternative method; or
- (3) reaffirm the rejection of the alternative method.

[3.4.22.12 NMAC - N, 12/30/15]

#### **3.4.22.13 - CALCULATING THE TAX CREDIT**

A. The department calculates the maximum new sustainable building tax credit for sustainable commercial buildings that are not multifamily dwelling units based on the qualified occupied square footage of the sustainable commercial building, the LEED rating system under which the applicant achieved LEED certification and the certification level the applicant achieved. The tax credit for various square footages is specified in the chart below:

LEED-NC silver:	
first 10,000 square feet	equals the qualified square footage less than or equal to 10,000 multiplied by \$3.50; plus
next 40,000 square feet	the qualified square footage greater than 10,000 and less than or equal to 50,000 multiplied by \$1.75; plus
next 450,000 square feet	the qualified square footage greater than 50,000 and less than or equal to 500,000 multiplied by \$.70
LEED-NC gold:	
first 10,000 square	equals the qualified square footage less than or equal to 10,000 multiplied by \$4.75; plus
next 40,000 square feet	the qualified square footage greater than 10,000 and less than or equal to 50,000 multiplied by \$2.00; plus
next 450,000 square feet	the qualified square footage greater than 50,000 and less than or equal to 500,000 multiplied by \$1.00
LEED-NC platinum:	
first 10,000 square feet	equals the qualified square footage less than or equal to 10,000 multiplied by \$6.25; plus
next 40,000 square feet	the qualified square footage greater than 10,000 and less than or equal to 50,000 multiplied by \$3.25; plus
next 450,000 square feet	the qualified square footage greater than 50,000 and less than or equal to 500,000 multiplied by \$2.00
LEED-EB OR LEED-CS silver:	
first 10,000 square feet	equals the qualified square footage less than or equal to 10,000 multiplied by \$2.50; plus
next 40,000 square feet	the qualified square footage greater than 10,000 and less than or equal to 50,000 multiplied by \$1.25; plus
next 450,000 square feet	the qualified square footage greater than 50,000 and less than or equal to 500,000 multiplied by \$.50
LEED-EB OR LEED-CS gold:	
first 10,000 square feet	equals the qualified square footage less than or equal to 10,000 multiplied by \$3.35; plus

next 40,000 square feet	the qualified square footage greater than 10,000 and less than or equal to 50,000 multiplied by \$1.40; plus
next 450,000 square feet	the qualified square footage greater than 50,000 and less than or equal to 500,000 multiplied by \$.70
LEED-EB OR LEED-CS platinum:	
first 10,000 square feet	equals the qualified square footage less than or equal to 10,000 multiplied by \$4.40; plus
next 40,000 square feet	the qualified square footage greater than 10,000 and less than or equal to 50,000 multiplied by \$2.30; plus
next 450,000 square feet	the qualified square footage greater than 50,000 and less than or equal to 500,000 multiplied by \$1.40
LEED-CI silver:	
first 10,000 square feet	equals the qualified square footage less than or equal to 10,000 multiplied by \$1.40; plus
next 40,000 square feet	the qualified square footage greater than 10,000 and less than or equal to 50,000 multiplied by \$.70; plus
next 450,000 square feet	the qualified square footage greater than 50,000 and less than or equal to 500,000 multiplied by \$.30
LEED-CI gold:	
first 10,000 square feet	equals the qualified square footage less than or equal to 10,000 multiplied by \$1.90; plus
next 40,000 square feet	the qualified square footage greater than 10,000 and less than or equal to 50,000 multiplied by \$.80; plus
next 450,000 square feet	the qualified square footage greater than 50,000 and less than or equal to 500,000 multiplied by \$.40
LEED-CI platinum:	
first 10,000 square feet	equals the qualified square footage less than or equal to 10,000 multiplied by \$2.50; plus
next 40,000 square feet	the qualified square footage greater than 10,000 and less than or equal to 50,000 multiplied by \$1.30; plus
next 450,000 square feet	the qualified square footage greater than 50,000 and less than or equal to 500,000 multiplied by \$.80

**B.** The department calculates the maximum new sustainable building tax credit for multifamily dwelling units based on the qualified occupied square footage of the sustainable

building, the rating system under which the applicant achieved certification and the certification level the applicant achieved. The tax credit for various square footages is specified in the chart below:

LEED-H silver or build green New Mexico silver:	
up to 2,000 square feet	equals the qualified square footage less than or equal to 2,000 multiplied by \$3.00
LEED-H gold or build green New Mexico gold:	
up to 2,000 square feet	equals the qualified square footage less than or equal to 2,000 multiplied by \$4.50
LEED-H platinum or build green New Mexico emerald:	
up to 2,000 square feet	equals the qualified square footage less than or equal to 2,000 multiplied by \$6.50

C. The taxation and revenue department makes the final determination of the amount of the new sustainable building tax credit.

[3.4.22.13 NMAC - N, 12/30/15]

#### **3.4.22.14 - CLAIMING THE STATE TAX CREDIT**

To claim the new sustainable building tax credit for a given year, an applicant shall submit all certificates of eligibility to the taxation and revenue department prior to the end of that taxable year, along with a completed form provided by the taxation and revenue department, and any other information the taxation and revenue department requires.

[3.4.22.14 NMAC - N, 12/30/15]

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**7-2A-29.-- FOSTER YOUTH EMPLOYMENT CORPORATE INCOME TAX CREDIT.--**

A. A taxpayer that employs a qualified foster youth in New Mexico is eligible for a credit against the taxpayer's tax liability imposed pursuant to the Corporate Income and Franchise Tax Act in an amount up to one thousand dollars (\$1,000) of the gross wages paid to each qualified foster youth by the taxpayer during the taxable year for which the return is filed. A taxpayer that employs a qualified foster youth for less than the full taxable year is eligible for a credit amount equal to one thousand dollars (\$1,000) multiplied by the fraction of a full year for which the qualified foster youth was employed. The tax credit provided by this section may be referred to as the "foster youth employment corporate income tax credit".

B. The purpose of the foster youth employment corporate income tax credit is to encourage the employment of individuals who as youth were adjudicated as abused or neglected or who were in the legal custody of the children, youth and families department under the Children's Code or in the legal custody of a New Mexico Indian nation, tribe or pueblo or the United States department of the interior bureau of Indian affairs division of human services.

C. A taxpayer may claim the foster youth employment corporate income tax credit provided in this section for each taxable year in which the taxpayer employs one or more qualified foster youths; provided that the taxpayer may not claim the foster youth employment corporate income tax credit for any individual qualified foster youth for more than one calendar year from the date of hire.

D. That portion of a foster youth employment corporate income tax credit approved by the department that exceeds a taxpayer's corporate income tax liability in the taxable year in which the foster youth employment corporate income tax credit is claimed shall not be refunded to the taxpayer but may be carried forward for up to three years. The foster youth employment corporate income tax credit shall not be transferred to another taxpayer.

E. The taxpayer shall submit to the department with respect to each employee for whom the foster youth employment corporate income tax credit is claimed information required by the department with respect to the qualified foster youth's employment by the taxpayer during the taxable year for which the foster youth employment corporate income tax credit is claimed, including information establishing that the employee is a qualified foster youth that can be used to determine that the employee was not also employed in the same taxable year by another taxpayer claiming a foster youth employment income or corporate income tax credit for that employee pursuant to this section or the Income Tax Act.

F. The department shall:

(1) adopt rules establishing procedures to certify that an employee is a qualified foster youth for purposes of obtaining a foster youth employment corporate income tax credit. The rules shall ensure that not more than one foster youth employment corporate income tax credit per qualified foster youth shall be allowed in a taxable year and that the credits allowed per qualified foster youth are limited to a maximum of one year's employment; and

(2) collaborate with the children, youth and families department, the New Mexico Indian nations, tribes and pueblos and the United States department of

the interior bureau of Indian affairs division of human services to establish the certification procedures.

G. A taxpayer allowed a tax credit pursuant to this section shall report the amount of the credit to the department in a manner required by the department.

H. The department shall compile an annual report on the foster youth employment corporate income tax credit that shall include the number of taxpayers approved by the department to receive the credit, the aggregate amount of credits approved and any other information necessary to evaluate the effectiveness of the credit. The department shall present the annual report to the revenue stabilization and tax policy committee and the legislative finance committee with an analysis of the effectiveness and cost of the tax credit and whether the tax credit is performing the purpose for which it was created.

I. As used in this section, "qualified foster youth" means an individual:

(1) who:

(a) is currently in the legal custody of the children, youth and families department pursuant to the Children's Code or in the legal custody of a New Mexico Indian nation, tribe or pueblo or the United States department of the interior bureau of Indian affairs division of human services; or

(b) within the seven years prior to the taxable year for which the tax credit is claimed, was aged fourteen years or older and was in the legal custody of the children, youth and families department pursuant to the Children's Code or in the legal custody of a New Mexico Indian nation, tribe or pueblo or the United States department of the interior bureau of Indian affairs division of human services;

(2) who works at least twenty hours per week during the taxable year for which the foster youth employment corporate income tax credit is claimed; and

(3) who was not previously employed by the taxpayer prior to the taxable year for which the foster youth employment corporate income tax credit is claimed.

(Laws 2018, Chapter 36, Section 2; Applicable to taxable years beginning on or after January 1, 2018)

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**7-2A-30. DEDUCTION TO OFFSET MATERIAL FINANCIAL EFFECTS OF CHANGES IN DEFERRED TAX AMOUNTS DUE TO CERTAIN CHANGES MADE TO SECTIONS 7-2A-2, 7-2A-3, 7-2A-8.3, 7-4-10 AND 7-4-18 NMSA 1978.-**

A. For each of ten consecutive taxable years beginning on or after January 1, 2026, a filing group subject to the corporate income tax whose members are part of a publicly traded company may claim a deduction, as provided by Subsection B of this section, from taxable income before net operating losses are deducted.

B. The deduction for each taxable year shall not exceed one-tenth of the amount of the aggregate increase in net deferred tax liabilities, the aggregate decrease in net deferred tax assets or an aggregate change from a net deferred tax asset to a net deferred tax liability, as measured under generally accepted accounting principles, that resulted from the changes to Sections 7-2A-2, 7-2A-3, 7-2A-8.3, 7-4-10 and 7-4-18 NMSA 1978 made by this 2019 act; provided that:

(1) the amount of the aggregate change in deferred tax assets and deferred tax liabilities is properly included in the calculation of the deferred tax asset or deferred tax liability reported as part of the consolidated financial statements, as required by the federal Securities Exchange Act of 1934, for the first reporting period affected by the changes to Sections 7-2A-2, 7-2A-3, 7-2A-8.3, 7-4-10 and 7-4-18 NMSA 1978 made by this 2019 act but for the deduction provided by this section; and

(2) if the deduction provided by this section is greater than the taxpayer's net income, any excess amount shall be carried forward and applied as a deduction to the taxpayer's net income in future income years until fully utilized.

C. A filing group shall not claim a deduction pursuant to this section unless the filing group files a preliminary notice with the secretary prior to January 1, 2023 and provides necessary information to show the calculation of the deduction expected to be claimed, as the secretary may require.

(Laws 2019, Chapter 270, Section 20 – Applicable to taxable years beginning on or after January 1, 2020)

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