INCOME TAX ACT

Sections 7-2-1 to 7-2-41 NMSA 1978

REGULATIONS [3.3 NMAC]
Title 3 – Taxation
Chapter 3 – Personal Income Tax

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7-2-1. SHORT TITLE.

Chapter 7, Article 2 NMSA 1978 may be cited as the "Income Tax Act".
(Laws 1979, Chapter 92, Section 1)

3.3.1.8 CITATION OF REGULATIONS

Unless otherwise stated, all citations of statutes in Title 3, Chapter 3 NMAC pertaining to the Income Tax Act are to the New Mexico Statutes Annotated, 1978 (NMSA 1978).
[1/15/74, 12/29/89, 3/16/92, 1/15/97; 3.3.1.8 NMAC - Rn, 3 NMAC 3.1.8, 12/14/00]

7-2-2. DEFINITIONS.

For the purpose of the Income Tax Act and unless the context requires otherwise:

A. "adjusted gross income" means adjusted gross income as defined in Section 62 of the Internal Revenue Code, as that section may be amended or renumbered;

B. "base income":

(1) means, for estates and trusts, that part of the estate's or trust's income defined as taxable income and upon which the federal income tax is calculated in the Internal Revenue Code for income tax purposes plus:

(a) for taxable years beginning on or after January 1, 1991, the amount of the net operating loss deduction allowed by Section 172(a) of the Internal Revenue Code, as that section may be amended or renumbered, and taken by the taxpayer for that year; and

(b) for taxable years beginning on or after January 1, 2023, an amount equal to the amount of credit claimed and allowed for that year pursuant to Section 7-3A-10 NMSA 1978 with respect to the distributed net income of a pass-through entity;

(2) means, for taxpayers other than estates or trusts, that part of the taxpayer's income defined as adjusted gross income plus:

(a) for taxable years beginning on or after January 1, 1991, the amount of the net operating loss deduction allowed by Section 172(a) of the Internal Revenue Code, as that section may be amended or renumbered, and taken by the taxpayer for that year; and

(b) for taxable years beginning on or after January 1, 2023, an amount equal to the amount of credit claimed and allowed for that year pursuant to Section 7-3A-10 NMSA 1978 with respect to the distributed net income of a pass-through entity;

(3) includes, for all taxpayers, any other income of the taxpayer not included in adjusted gross income but upon which a federal tax is calculated pursuant to the Internal Revenue Code for income tax purposes, except amounts for which a calculation of tax is made pursuant to Section 55
of the Internal Revenue Code, as that section may be amended or renumbered; "base income" also includes interest received on a state or local bond;

(4) includes, for all taxpayers, an amount deducted pursuant to Section 7-2-32 NMSA 1978 in a prior taxable year if:

(a) such amount is transferred to another qualified tuition program, as defined in Section 529 of the Internal Revenue Code, not authorized in the Education Trust Act; or

(b) a distribution or refund is made for any reason other than: 1) to pay for qualified higher education expenses, as defined pursuant to Section 529 of the Internal Revenue Code; or 2) upon the beneficiary's death, disability or receipt of a scholarship; and

(5) excludes, for a taxpayer who conducts a lawful business pursuant to the laws of the state, an amount equal to any expenditure that is eligible to be claimed as a federal income tax deduction but is disallowed by Section 280E of the Internal Revenue Code, as that

section may be amended or renumbered;

C. "compensation" means wages, salaries, commissions and any other form of remuneration paid to employees for personal services;

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

E. "fiduciary" means a guardian, trustee, executor, administrator, committee, conservator, receiver, individual or corporation acting in any fiduciary capacity;

F. "filing status" means "married filing joint returns", "married filing separate returns", "head of household", "surviving spouse" and "single", as those terms are generally defined for federal tax purposes;

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

H. "head of household" means "head of household" as generally defined for federal income tax purposes;

I. "individual" means a natural person, an estate, a trust or a fiduciary acting for a natural person, trust or estate;

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

K. "lump-sum amount" means, for the purpose of determining liability for federal income tax, an amount that was not included in adjusted gross income but upon which the five-year-averaging or the ten-year-averaging method of tax computation provided in Section 402 of the Internal Revenue Code, as that section may be amended or renumbered, was applied;

L. "modified gross income" means all income of the taxpayer and, if any, the taxpayer's spouse and dependents, undiminished by losses and from whatever source, including:

(1) compensation;

(2) net profit from business;

(3) gains from dealings in property;

(4) interest;

(5) net rents;

(6) royalties;

(7) dividends;

(8) alimony and separate maintenance payments;

(9) annuities;

(10) income from life insurance and endowment contracts;

(11) pensions;

(12) discharge of indebtedness;

(13) distributive share of partnership income;

(14) income in respect of a decedent;

(15) income from an interest in an estate or a trust;

(16) social security benefits;

(17) unemployment compensation benefits;

(18) workers' compensation benefits;

(19) public assistance and welfare benefits;

(20) cost-of-living allowances; and

(21) gifts;

M. "modified gross income" excludes:

(1) payments for hospital, dental, medical or drug expenses to or on behalf of the taxpayer;

(2) the value of room and board provided by federal, state or local governments or by private individuals or agencies based upon financial need and not as a form of

compensation;

(3) payments pursuant to a federal, state or local government program directly or indirectly to a third party on behalf of the taxpayer when identified to a particular use or invoice by the payer; or

(4) payments for credits and rebates pursuant to the Income Tax Act and made for a credit pursuant to Section 7-3-9 NMSA 1978;

N. "net income" means, for estates and trusts, base income adjusted to exclude amounts that the state is prohibited from taxing because of the laws or constitution of this state or the United States and means, for taxpayers other than estates or trusts, base income adjusted to exclude:

(1) an amount equal to the standard deduction allowed the taxpayer for the taxpayer's taxable year by Section 63 of the Internal Revenue Code, as that section may be amended or renumbered;

(2) an amount equal to the itemized deductions defined in Section 63 of the Internal Revenue Code, as that section may be amended or renumbered, allowed the taxpayer for the taxpayer's taxable year less the amount excluded pursuant to Paragraph (1) of this subsection and less the amount of state and local income and sales taxes included in the taxpayer's itemized deductions;

(3) an amount equal to the product of the exemption amount allowed for the taxpayer's taxable year by Section 151 of the Internal Revenue Code, as that section may be amended or renumbered, multiplied by the number of personal exemptions allowed for federal income tax purposes;

(4) income from obligations of the United States of America less expenses incurred to earn that income;

(5) other amounts that the state is prohibited from taxing because of the laws or constitution of this state or the United States;

(6) for taxable years beginning on or after January 1, 2013, an amount equal to the sum of any net operating loss carryover deductions to that year claimed and allowed; provided that the amount of any net operating loss carryover may be excluded only as follows:

(a) in the case of a timely filed return, in the taxable year immediately following the taxable year for which the return is filed; or

(b) in the case of amended returns or original returns not timely filed, in the first taxable year beginning after the date on which the return or amended return establishing the net operating loss is filed; and

(c) in either case, if the net operating loss carryover exceeds the amount of net income exclusive of the net operating loss carryover for the taxable year to which the exclusion first applies, in the next

nineteen succeeding taxable years in turn until the net operating loss carryover is exhausted for any net operating loss carryover from a taxable year beginning on or after January 1, 2013; in no event shall a net operating loss carryover from a taxable year beginning: 1) prior to January 1, 2013 be excluded in any taxable year after the fourth taxable year beginning after the taxable year to which the exclusion first applies; and 2) on or after January 1, 2013 be excluded in any taxable year after the nineteenth taxable year beginning after the taxable year to which the exclusion first applies; and

(7) for taxable years beginning on or after January 1, 2011, an amount equal to the amount included in adjusted gross income that represents a refund of state and local income and sales taxes that were deducted for federal tax purposes in taxable years beginning on or after January 1, 2010;

O. "net operating loss" means any net operating loss, as defined by Section 172(c) of the Internal Revenue Code, as that section may be amended or renumbered, for a taxable year as further increased by the income, if any, from obligations of the United States for that year less related expenses;

P. "net operating loss carryover" means the amount, or any portion of the amount, of a net operating loss for any taxable year that, pursuant to Paragraph (6) of Subsection N of this section, may be excluded from base income;

Q. "nonresident" means every individual not a resident of this state;

R. "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;

S. "resident" means an individual who is domiciled in this state during any part of the taxable year or an individual who is physically present in this state for one hundred eighty-five days or more during the taxable year; but any individual, other than someone who was physically present in the state for one hundred eighty-five days or more during the taxable year, who, on or before the last day of the taxable year, changed the individual's place of abode to a place without this state with the bona fide intention of continuing actually to abide permanently without this state is not a resident for the purposes of the Income Tax Act for periods after that change of abode;

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

U. "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 any political subdivision of a foreign country;

V. "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;

W. "surviving spouse" means "surviving spouse" as generally defined for federal income tax purposes;

X. "taxable income" means net income less any lump-sum amount;

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

Z. "taxpayer" means any individual subject to the tax imposed by the Income Tax Act.

(Laws 2023, Chapter 159, Section 1)

3.3.1.7 DEFINITIONS

For purposes of Subsection S of Section 7-2-2 NMSA and Section 3.3.1.9 NMAC, a “day” is any consecutive 24-hour period.

[3.3.1.7 NMAC – N, 4/29/05]

3.3.1.9 RESIDENCY

A. Full-year residents. For purposes of the Income Tax Act, the following are full-year residents of this state:

(1) an individual domiciled in this state during all of the taxable year, or

(2) an individual other than an individual described in Subsection D of this Section who is physically present in this state for a total of one hundred eighty-five (185) days or more in the aggregate during the taxable year, regardless of domicile.

B. Part-year residents.

(1) An individual who is domiciled in New Mexico for part but not all of the taxable year, and who is physically present in New Mexico for fewer than 185 days, is a part-year resident.

(a) During the first taxable year in which an individual is domiciled in New Mexico, if the individual is physically present in New Mexico for less than a total of 185 days, the individual will be treated as a non-resident of New Mexico for income tax purposes for the period prior to establishing domicile in New Mexico.

(b) An individual domiciled in New Mexico who is physically present in New Mexico for fewer than 185 days and changes his domicile to a place outside this state with the bona fide intention of continuing to live permanently outside New Mexico, is not a resident for Income Tax Act purposes for periods after that change of domicile.

(2) An individual who moves into this state with the intent to make New Mexico his permanent domicile is a first-year resident. A first-year resident should report any income earned prior to moving into New Mexico as nonresident income even if he is physically present in New Mexico for 185 days or more.

C. "Domicile" defined:

(1) A domicile is the place where an individual has a true, fixed home, is a permanent establishment to which the individual intends to return after an absence, and is where the individual has voluntarily fixed habitation of self and family with the intention of making a permanent home. Every individual has a domicile somewhere, and each individual has only one domicile at a time.

(2) Once established, domicile does not change until the individual moves to a new location with the bona fide intention of making that location his or her permanent home.

(3) No change in domicile results when an individual leaves the state if the individual’s intent is to stay away only for a limited time, no matter how long, including:

(a) for a period of rest or vacation;

(b) to complete a particular transaction, perform a contract or fulfill an engagement or obligation, but intends to return to New Mexico whether or not the transaction, contract, engagement or obligation is completed, or

(c) to accomplish a particular purpose, but does not intend to remain in the new location once the purpose is accomplished.

(4) To determine domicile, the department shall give due weight to an individual’s declaration of intent. However, those declarations shall not be conclusive where they are contradicted by facts, circumstances and the individual’s conduct. In particular, the department will consider the following factors in determining whether an individual is domiciled in New Mexico (the list is not intended to be exclusive and is in no particular order):

(a) homes or places of abode owned or rented (for the individual’s use) by the individual, their location, size and value; and how they are used by the individual;

(b) where the individual spends time during the tax year and how that time is spent; e.g., whether the individual is retired or is actively involved in a business, and whether the individual travels and the reasons for traveling, and where the individual spends time when not required to be at a location for employment or business reasons, and the overall pattern of residence of the individual;

(c) employment, including how the individual earns a living, the location of the individual’s place of employment, whether the individual owns a business, extent of involvement in business or profession and location of the business or professional office, and the proportion of in-state to out-of-state business activities;

(d) home or place of abode of the individual’s spouse, children and dependent parents, and where minor children attend school;

(e) location of domicile in prior years;

(f) ownership of real property other than residences;

(g) location of transactions with financial institutions, including the individual's most active checking account and rental of safety deposit boxes;

(h) place of community affiliations, such as club and professional and social organization memberships;

(i) home address used for filing federal income tax returns;

(j) place where individual is registered to vote;

(k) state of driver's license or professional licenses;

(l) resident or nonresident status for purposes of tuition at state schools, colleges and universities, fishing and hunting licenses, and other official purposes; and

(m) where items or possessions that the individual considers "near and dear" to his or her heart are located, e.g., items of significant sentimental or economic value (such as art), family heirlooms, collections or valuables, or pets.

(5) The department shall evaluate questions regarding domicile on a case-by-case basis. No one of the factors considered by the department shall be conclusive with respect to an individual's domicile. Factors such as the state of driver's license, place of voter registration and home address may be given less weight, depending on the circumstances, because they are relatively easy to change for tax purposes.

D. "Domicile" and residency for armed forces personnel.

(1) A resident of this state who is a member of the United States armed forces does not lose residence or domicile in this state, or gain residency or domicile in another state, solely because the service member left this state in compliance with military orders.

(2) A resident of another state who is a member of the United States armed forces does not acquire residence or domicile in this state solely because the service member is in this state in compliance with military orders.

(3) A resident of another state who is a member of the United States armed forces does not become a resident of this state solely because the service person is in this state for one hundred and eighty-five (185) or more days in a taxable year.

(4) Compensation for service in the armed forces is subject to personal income tax only in the state of the service member's domicile. "Compensation for military service" does not include compensation for off-duty employment, or military retirement income.

(5) For purposes of this section, "armed forces" means all members of the army of the United States, the United States navy, the marine corps, the air force, the coast guard, all officers of the public health service detailed by proper authority for duty either with the army or the navy, reservists placed on active duty, and members of the national guard called to active federal duty.

E. Examples:

(1) A, a life-long resident of Texas, accepts a job in New Mexico. On December 5, 2003, A moves to New Mexico with the intention of making New Mexico her permanent home. A has established domicile in New Mexico during the 2003 tax year. Because she was physically present in New Mexico for fewer than 185 days during that year, she should file as a part-year resident, and she will be treated as a resident for personal income tax purpose only for that period after she establishes a New Mexico domicile.

(2) B, a resident of Arizona, makes several weekend visits to New Mexico in the early months of 2004. On July 1, 2004, he moves to New Mexico with the intention of making it his permanent home. Family matters call him back to Arizona on August 1, 2004, and he soon determines that he must remain in Arizona. B was domiciled in New Mexico during the thirty days he spent in this state with the intention of making it his permanent home. Because B was physically present in this state for fewer than 185 days in 2004, B should file as a part-year resident for that tax year. For personal income tax purposes he will be treated as a resident of New Mexico only from July 1 to August 1, 2004.

(3) C was born and raised in New Mexico. She leaves New Mexico in

December 2003 to pursue a two-year master's degree program in Spain. She intends to return to New Mexico when she completes her studies. During her absence she keeps her New Mexico driver's license and voter registration. Because New Mexico remains her domicile, C should file returns for tax years 2003, 2004 and 2005 as a full-year New Mexico resident.

(4) D, a resident of California, comes to New Mexico on three separate occasions in 2004 to work on a movie. D does not intend to remain in New Mexico, and when the movie is completed, D returns to her home in California. D is physically present in New Mexico for 200 days in 2004. Because D was physically present in New Mexico for at least 185 days, D must file as a full-year resident of New Mexico for tax year 2004.

(5) E, a resident of New Mexico, joined the army. Since joining the military, E has been stationed in various places around the world. Although E has not been back to New Mexico in the ten years since he joined the army, he continues to vote in New Mexico and holds a current New Mexico driver's license. E must file as a full-year resident of New Mexico.

(6) Same facts as Example 5, except that in August 2003, while stationed in Georgia, E retires from the military. Instead of returning to New Mexico, E moves to Florida where he intends to spend his retirement. For tax year 2003, E must file as a part-year resident, because he was not physically present in the state for 185 days or more. E is a resident of New Mexico until August 2003, when he moves to Florida with the intent of making that his permanent home.

(7) F, a resident of Texas, is an air force officer. In March 2002 he moves to New Mexico to begin a two-year assignment at Kirtland Air Force Base. F is registered to vote in Texas and holds a Texas driver's license. F is not a resident of New Mexico in 2002. During the second year of F's assignment, he registers to vote in New Mexico, obtains a New Mexico driver's license, and enrolls his son in a New Mexico university paying resident tuition. Although F's presence in New Mexico under military orders is not sufficient to establish New Mexico residency or domicile, his conduct in 2003 is sufficient to establish domicile. In 2003 F must file as a part-year resident of New Mexico. He will be treated as a non-resident for income tax purposes for that period of 2003 prior to establishing domicile in New Mexico.

(8) G is a Native American who lives and works on his tribe's pueblo in New Mexico. Federal law prohibits the state from taxing income earned by a Native American who lives and works on his tribe's territory. G joins the marines and is stationed outside New Mexico. Because G's domicile remains unchanged during his military service, G's income from military service is treated as income earned on the tribe's territory by a tribal member living on the tribe's territory, and is not taxable by New Mexico.

[10/23/85, 12/29/89, 3/16/92, 6/24/93, 1/15/97; 3.3.1.9 NMAC - Rn & A, 3 NMAC 3.1.9, 12/14/00, A, 4/29/05; A, 4/28/06; A, 12/15/10]

3.3.1.10 MODIFIED GROSS INCOME

A. Modified gross income definitions.

(1) The following definitions apply in determining the amount of modified gross income for each taxable year:

(a) "Social Security Benefits" means only cash payments made pursuant to Title II of the Social Security Act for old age, survivors and disability benefits, including any amount deducted for part B coverage.

(b) "Unemployment Compensation Benefits" means cash benefits paid through the employment security division of the New Mexico department of labor or any similar state agency of another state or any private income substitution program.

(c) "Workers' Compensation Benefits" means cash payments to the worker made by the employer or any insurance company providing workers' compensation coverage where such payments are based on the worker's average weekly wage, but does not include payments for medical or rehabilitative services, whether made directly to the provider or made to the worker for reimbursement of such expenses.

(d) "Public Assistance and Welfare Benefits" means unrestricted cash payments made under the supplemental security income program, the aid to families with dependent children program, general assistance or similar programs. It does not include medical payments or reimbursements under medicaid, medicare, hospital indigency programs, department of vocational rehabilitation programs, V.A. medical assistance, CHAMPUS or other such programs. It does not include housing subsidies or payments.

(e) "Cost of Living Allowances" or "Gifts" do not include provision of free room and board to persons when that room is provided based on financial need or noncommercial considerations. "Costs of living allowances" does include provision of room or compensation for room made during an employer-employee relationship or other commercial situation.

(f) "Income From Discharge of Indebtedness" means income which becomes available because of the forgiveness of a debt. It does not include debts which are discharged by bankruptcy or when the discharge fails to result in the availability of cash resources.

(g) "Gains Derived From Dealings in Property" mean "gains derived from dealings in property" as defined in 26 C.F.R. (Internal Revenue Service Income Tax Regulation) 1.61-6, as amended or renumbered.

(h) "Interest" means "interest" as defined in 26 C.F.R. (Internal Revenue Service Income Tax Regulation) 1.61-7, as amended or renumbered.

(i) "Net Rents" means cash income derived from the rental of real or personal property over and above all expenditures related to the rented property, including but not limited to mortgage payments, management expenses, housekeeping, property taxes, brokerage fees, special assessments and other operating charges.

(j) "Annuities" and "Income From Life Insurance and Endowment Contracts" mean "annuities" and "certain proceeds of endowment and life insurance contracts" as defined in 26 U.S.C. Section 72 (Internal Revenue Code of 1986), as amended or renumbered, and regulations promulgated thereunder.

(2) Scholarships, grants, fellowships or similar payments, made either to the taxpayer or to an educational institution or to both, which do not have to be repaid are modified gross income.

(3) Modified gross income does not include:

(a) payments made for hospital, dental, medical or drug expenses, whether the payment is made directly to the insured/recipient or to a third party provider, and regardless of whether a premium is paid or not.

(b) the value of room and board provided by federal, state or local government or by private individuals or agencies when the assistance is based upon financial need or other noncommercial considerations, and not as a form of compensation.

(c) debts that have been discharged by a United States bankruptcy court.

(d) gifts or gratuities which are not cash or which have no market value or only negligible market value.

(e) any additional benefits or payments made pursuant to a government program made directly or indirectly to a third party, when identified to a particular use or invoice, such as housing rehabilitation grants for low income housing, housing subsidies or payments, weatherization payments and energy crisis intervention payments pursuant to the Home Energy Assistance Act of 1980 (Title III of Public Law 96-223).

(f) payments made to New Mexico residents pursuant to the foster grandparent program under the National Older American Volunteer Act (42 U.S.C. Section 5011).

(g) the value of food stamp coupons under the Food Stamp Act, 7 U.S.C. § 2016c.

(h) monies received during the taxable year as comprehensive low income, food, medical, low income food and medical or property tax rebates.

(i) proceeds from loans which the taxpayer is legally obligated to repay.

(4) Example 1: G has two children and receives $2,796 per year AFDC (Aid to Families with Dependent Children) from the human services department. The monthly rate is $233 per month. G lives in a Section VIII rent subsidy house for which G pays $50 a month rent and the housing authority pays the owner an additional $150 per month. During the year the human services department pays $550 for health and medical expenses for G and G's children under the medicaid program. G's modified gross income is $2,796. Neither the rent subsidy nor medicaid is includable as modified gross income.

(5) Example 2: A is 75 years old and receives a total of $238 per month from social security and supplemental security income ($170 per month social security and $68 per month SSI). A lives in a trailer which A's daughter and son-in-law own and in which A has permission to remain until A dies. A also received two tanks of bottled gas under the community action energy crisis program. A's modified gross income is $2,856 ($238 a month times 12 months). The rental value of the trailer is not included in modified gross income since it was provided upon noncommercial considerations and to a person in need. The utility assistance A received is also not included.

(6) Example 3: B is a retired person. B has medical bills of $600 for which B's insurance will reimburse B after B pays the doctor. B also received approximately $1,500 in housing rehabilitation benefits, which were paid in one check made payable to B and the housing contractor. Later on B was given a check for $200 by the housing rehabilitation agency to pay for materials which B had purchased on credit as part of the rehabilitation program. B is living on a savings account which earns interest. B's modified gross income is only the amount of interest earned by the savings account. The insurance payment is not modified gross income because it is an indirect medical payment and identified to a particular expense. The same reasoning applies to the $200 payment made for the materials. Finally, the weatherization or rehabilitation benefits are not modified gross income.

(7) Example 4: M is an elderly person who lives alone and receives $500 per month ($6,000 per year) social security payments. Periodically, M receives gifts of food and used clothing from community sources. M is given a used pickup truck, valued at $1,000, and jewelry valued at $3,000 by a relative. M's modified gross income is $6,000 plus $1,000, plus $3,000, for a total of $10,000. The car and jewelry are included since they are gifts which are tangible marketable items. The food and clothing do not represent cash or marketable items and so are not included in modified gross income.

B. Impact of losses on modified gross income. "Modified gross income" may not be diminished by deductions or offset by losses which may be allowed under the New Mexico Income Tax Act or under the Internal Revenue Code of 1986, as amended or renumbered. Despite any loss occurring from any transaction, or any expense connected therewith, zero is the lowest amount which may be reported for any item in computing "modified gross income". The loss from one business or activity shall not reduce the income from another business or activity. If a business incurs a loss during the taxable year, the amount of income to be included in modified gross income from that business is zero (-0-) for that taxable year.

C. Sick pay included in modified gross income. "Sick pay", payments received for damages for personal injury or illness and disability payments from whatever source are "modified gross income".

D. Settlement of claims included in modified gross income. Amounts received in settlement of a claim or as a result of a judgment are "modified gross income".

[1/18/82, 12/29/89, 7/20/90, 3/16/92, 1/15/97; 3.3.1.10 NMAC - Rn, 3 NMAC 3.1.10, 12/14/00]

3.3.1.11 REQUIREMENTS FOR CLAIMING DEPENDENTS AS PERSONAL EXEMPTIONS

A. Except as otherwise provided by 3.3.1.11 NMAC, each dependent claimed as a personal exemption for New Mexico income tax purposes must meet the tests of dependency in Section 152 of the Internal Revenue Code as amended or renumbered. The taxpayer shall provide the name of each dependent and the social security number for any dependent who is two years of age or older when required to do so by the instructions to the New Mexico income tax return. The personal exemption amount claimed for a dependent may be disallowed if the dependent does not meet the tests of dependency or if required information is not provided.

B. For purposes of claiming a tax rebate or credit for which eligibility is determined by the amount of modified gross income, a dependent must meet all tests of dependency required by Section 152 of the Internal Revenue Code except the requirement that public assistance provide less than half of the dependent's total support.

[10/11/91, 3/16/92, 1/15/97; 3.3.1.11 NMAC - Rn & A, 3 NMAC 3.1.11, 12/14/00]

3.3.1.12 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.

(3) This version of Subsection 3.3.1.12A NMAC is retroactively effective for taxable years beginning on or after January 1, 1991.

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 (3.3.1.12C 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;

(b) the mutual fund provides to the investor an annual statement of the income, by source, which was distributed to the individual investor; and

(c) the trust provides to the beneficiary an annual statement of the income by source and that the income received by the beneficiary retains the same character under the Internal Revenue Code as that income had when earned by the trust.

(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.

(3) Subsection 3.3.1.12D NMAC applies to taxable years beginning on or after January 1, 1991.

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 7-2-2 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 resident, purchases a state of California

municipal bond in 1992 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 resident and calendar year filer, purchases a city of Los Angeles municipal bond in 1990. 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, 1991, B receives $1,000 of interest. Since this payment includes interest earned or accrued before January 1, 1991, this income is to be allocated between the period prior to the tax year and the period following December 31, 1990. The income accrual period is 182 days in length (October 1, 1990, through March 31, 1991), of which 90 days are in B's first taxable year beginning on or after January 1, 1991. B's 1991 base income includes $494.51 ($1,000 x 90/182). The remaining $505.49 is not subject to New Mexico income tax.

(6) Example 3: C, a New Mexico resident 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 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) x ($5,000 - $1,400)). The remaining $2,571.13 of income is not subject to New Mexico income tax.

(7) Example 4: Same facts as Example 3, except that C did not become a New Mexico resident until January 1, 1993. The income from the bond must be allocated between the period prior to January 1, 1993, and the period after December 31, 1992. 730 days follow December 31, 1992. C's 1995 base income includes $514.08 ((730/5112) x ($5,000 - $1,400)). The remaining $3,085.92 is not subject to New Mexico income tax.

(8) Subsection 3.3.1.12E NMAC applies to taxable years beginning on or after January 1, 1991.

F. Bonds issued by tribal governments are not "state or local bonds".

(1) Bonds issued by Indian governments are not "state or local bonds" under the Income Tax Act. As defined in Section 7-2-2 NMSA 1978, the term "state" does not include Indian nations, tribes or pueblos or their governments. The term "local government" is not defined by the Income Tax Act but is commonly used to mean political subdivisions of states. Indian nations, tribes and pueblos are not political subdivisions of states.

(2) To the extent that the Internal Revenue Code treats interest from bonds issued by Indian governments as if it were interest from "state or local bonds", such interest is excluded from federal adjusted gross income and therefore initially excluded from New Mexico base income as well. Because bonds issued by Indian governments are not "state or local bonds" for purposes of the Income Tax Act, interest income with respect to such bonds is not required to be added to federal adjusted gross income in determining New Mexico base income.

[3/16/92, 6/24/93, 11/17/95, 1/15/97, 1/15/98; 3.3.1.12 NMAC - Rn & A, 3 NMAC 3.1.12, 12/14/00]

3.3.1.13 NET OPERATING LOSSES

A. Net operating losses; generated by deduction of income from United States obligations.

(1) Section 3.3.1.13 NMAC and subsections thereunder apply to the income of a taxpayer derived from any unincorporated business.

(2) If, for an unincorporated business, the exclusion of income from obligations of the United States of America results in a negative amount for New Mexico net

income for that business for a taxable year, the resulting negative amount may be deemed to be a net operating loss for that taxable year. The taxpayer must establish the loss from exclusion of income from obligations of the United States of America by filing a New Mexico return or amended return within the time period set forth in Section 7-2-12 NMSA 1978, Subsections B, C and E of Section 7-1-26 NMSA 1978. An amended return carrying back or forward any such net operating loss must be filed within the time period set forth in Subsections B, C and E of Section 7-1-26 NMSA 1978. The taxpayer shall apply relevant provisions of 26 U.S.C. Section 172 of the Internal Revenue Code to determine the years to which the net operating loss may be applied.

(3) Any net operating loss deemed created by this subsection (3.3.1.13A NMAC) may be carried back or forward in accordance with the provisions of Section 7-2-2 NMSA 1978 and Subsections A through E of Section 3.3.1.13 NMAC. For taxable years beginning prior to January 1, 1991, the resulting taxable income shall then be allocated and apportioned in that year pursuant to the provisions of Section 7-2-11 NMSA 1978.

(4) For the purposes of Subsections A through E of Section 3.3.1.13 NMAC, the term "unincorporated business" includes:

(a) S corporations taxed as partnerships for federal income tax purposes; and

(b) limited liability companies formed pursuant to the Limited Liability Company Act or a similar law of another state which are not taxed as corporations for federal income tax purposes.

B. Net operating losses; time limitation.

(1) A net operating loss, including any net operating loss deemed created pursuant to Subsection 3.3.1.13A NMAC, for a taxable year may be excluded from the base income of any other taxable year only if the net operating loss for the taxable year is established by the filing of a return, either original or amended, within the time periods set forth in Subsections B, C and E of Section 7-1-26 NMSA 1978.

(2) Example: In 1997, a taxpayer who reports income tax on a calendar year basis discovers an error which relates to the taxpayer's state returns for 1990 and 1993. The original 1990 and 1993 returns were timely filed in 1991 and 1994, respectively. Absent the time limitations on filing amended returns, correcting the error through filing of amended returns would create net operating losses in both 1990 and 1993. An amended return may be filed only for 1993 and only the 1993 loss may be excluded from the base income of any other year.

C. Net operating losses; must be deductible for federal income tax purposes. The net operating loss carryover of an unincorporated business acquired by the taxpayer or otherwise included, as for example through a change in reporting method, in the taxpayer's return for a taxable year may be excluded from New Mexico base income only to the extent the Internal Revenue Code and regulations issued thereunder would permit deduction of such loss carryovers for federal income tax purposes for that taxable year by that taxpayer.

D. Net operating losses; carryover and carryback rules for taxable years beginning after 1990.

(1) For taxable years beginning on or after January 1, 1991, any net operating loss for federal tax purposes and any net operating loss deemed created pursuant to Subsection 3.3.1.13A NMAC included in net income derived from an unincorporated business may be carried forward only. These loss carryovers may be excluded from base income only for five years or until the total amount of the loss carryover has been excluded, whichever occurs first. The first year in which the loss carryover may be excluded from base income is:

(a) in the case of a timely filed original return, the next taxable year; and

(b) in all other cases, the first taxable year beginning after the date on which the return establishing the loss is filed, not the next taxable year following the taxable year in which the loss occurred.

(2) Example: B reports for income tax purposes on a calendar year basis. The 1991 original return included a net operating profit from a partnership in which B is a partner. Subsequently, the partnership reports revised information to B, showing a net operating loss instead of the original net operating profit. Consequently, in June, 1993, B files an amendment to B's timely filed 1991 original New Mexico individual income tax return. B may first apply the 1991 net operating loss reported on the 1993 amended return to B's New Mexico individual income tax return for 1994. B may not apply this net operating loss to 1992 or 1993.

(3) For taxable years beginning on or after January 1, 1991, net operating loss carryovers must be applied in the following order:

(a) net operating loss carryovers from taxable years beginning prior to January 1, 1991, beginning with the carryover from the oldest taxable year; and

(b) net operating loss carryovers from taxable years beginning on or after January 1, 1991, beginning with the carryover from the oldest taxable year.

(4) Example: Z began operating a sole proprietorship on January 1, 1988. Z has timely filed (on a calendar year basis) income tax returns every year. Z's business earns a net operating profit in 1988, a net operating profit of zero in 1989 and a net operating loss in 1990 which exceeded the 1988 profit by $5,000. Z's business sustains another net operating loss of $11,000 for 1991 but creates a net operating profit of $8,000 for 1992. In applying the loss carryovers, Z must first apply the net operating loss from 1990 to 1988. On Z's 1992 return, Z first applies the $5,000 carryover balance originating from 1990 and then the loss carryover deriving from 1991.

(5) For taxable years beginning on or after January 1, 1991, any taxpayer excluding a net operating loss carryover from a prior taxable year must attach to the New Mexico return for that taxable year a schedule showing the taxable year in which each net operating loss being carried forward occurred, the amount of each loss excluded in each taxable year following the taxable year in which the loss occurred and the amount of the loss being applied to the taxable year for which the return is being filed.

(6) For any taxable year beginning on or after January 1, 1991, the net operating loss for that taxable year may not be carried back to any preceding taxable year.

E. Net operating losses; carryover and carryback rules for taxable years beginning before 1991.

(1) For taxable years beginning prior to January 1, 1991, any net operating loss, including any net operating loss deemed created pursuant to Subsection 3.3.1.13A NMAC, may be carried forward or carried back to any other taxable year beginning prior to January 1, 1991 in accordance with the provisions of the Internal Revenue Code unless contrary to the provisions of the Income Tax Act and Title 3, Chapter 3 NMAC.

(2) For taxable years beginning prior to January 1, 1991, a net operating loss, including any net operating loss deemed created pursuant to Subsection 3.3.1.13A NMAC, may be carried back only to those prior taxable years for which an individual income tax return was originally due, without regard to any extension, in the period beginning with the January 1 of the third calendar year preceding the calendar year in which began the taxable year for which the loss is established and ending with the day before the first day of the taxable year for which the loss is established.

(3) Example: D operates an unincorporated business and files on a fiscal year basis. D's fiscal year ends April 30. In September, 1993, D files an amended individual income tax return for D's taxable year starting May 1, 1989 and ending April 30, 1990. The amendment establishes a net operating loss for that taxable year. The oldest year to which D may carry back the net operating loss is D's taxable year beginning May 1, 1985 and ending April 30, 1986, the return for which was originally due July 15, 1986.

[3/16/92, 12/28/94, 1/15/97; 3.3.1.13 NMAC - Rn & A, 3 NMAC 3.1.13, 12/14/00]

7-2-3. IMPOSITION AND LEVY OF TAX.

A tax is imposed at the rates specified in the Income Tax Act upon the net income of every resident individual and upon the net income of every nonresident individual 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.
(Laws 1981, Chapter 37, Section 14)

3.3.3.7 DEFINITIONS
"Nonresident trust" defined. A trust is a nonresident trust if the trustee responsible for the trust funds and for distributions from the fund is a resident of another state. A nonresident trust is subject to New Mexico income tax to the extent that it is engaged in the transaction of business in, into or from this state or is deriving income from any property located in this state. The presence of beneficiaries of the trust in New Mexico, alone, will not cause a tax liability to become due from the trust based on the activities of the trust. Beneficiaries who are residents of this state will incur a tax liability on their share of distributions from the trust to the extent that such distributions are subject to income taxation under the provisions of the Internal Revenue Code.
[7/20/90, 3/16/92, 1/15/97; 3.3.3.7 NMAC - Rn, 3 NMAC 3.3.7, 12/14/00]

3.3.4.8 INCOME OF A MEMBER OF A NATO FORCE
A. For purposes of this section (3.3.4.8 NMAC):
(1) "NATO signatory" means a nation, other than the United States, that is a contracting party to the North Atlantic Treaty;
(2) "NATO force" means any NATO signatory's military unit or force or civilian component thereof present in New Mexico in accordance with the North Atlantic Treaty; and
(3) "Member of a NATO force" means the military and civilian personnel of the NATO force and their dependents.
B. The salary, fringe benefits and other emoluments received by a member of a NATO force with respect to employment by or membership in the NATO force are not subject to the New Mexico income tax pursuant to Article X, Section 1 of the North Atlantic Treaty.
C. Income of a member of a NATO force from sources within New Mexico, other than from the member's employment by or membership in the NATO force, are subject to the tax imposed by Section 7-2-3 NMSA 1978.
D. This applies to taxable years beginning on or after January 1, 1995.
[12/22/95, 1/15/97; 3.3.4.8 NMAC - Rn & A, 3 NMAC 3.4.8, 12/14/00]

7-2-4. EXEMPTIONS.

No income tax shall be imposed upon:
A. 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
B. religious, educational, benevolent or other organizations not organized for profit which are exempt from income taxation under the Internal Revenue Code except to the extent that such income is subject to federal income taxation as "unrelated business income" under the Internal Revenue Code.
(Laws 1981, Chapter 37, Section 15)

7-2-5 AND 7-2-5.1. REPEALED MAY 16, 1990

7-2-5.2. EXEMPTION; INCOME OF PERSONS SIXTY-FIVE AND OLDER OR BLIND.

Any individual sixty-five years of age or older or who, for federal income tax purposes, is blind may claim an exemption in an amount specified in Subsections A through C of this section not to exceed eight thousand dollars ($8,000) of income includable except for this exemption in net income. Individuals having income both within and without this state shall apportion this exemption in accordance with regulations of the secretary.

A. For married individuals filing separate returns, for any taxable year beginning on or after January 1, 1987:

If adjusted gross income is:	The maximum amount of exemption allowable under this section shall be:
Not over $15,000	$8,000
Over $15,000 but not over $16,500	$7,000
Over $16,500 but not over $18,000	$6,000
Over $18,000 but not over $19,500	$5,000
Over $19,500 but not over $21,000	$4,000
Over $21,000 but not over $22,500	$3,000
Over $22,500 but not over $24,000	$2,000
Over $24,000 but not over $25,500	$1,000
Over $25,500	0.

B. For heads of household, surviving spouses and married individuals filing joint returns, for any taxable year beginning on or after January 1, 1987:

If adjusted gross income is:	The maximum amount of exemption allowable under this section shall be:
Not over $30,000	$8,000
Over $30,000 but not over $33,000	$7,000
Over $33,000 but not over $36,000	$6,000
Over $36,000 but not over $39,000	$5,000
Over $39,000 but not over $42,000	$4,000
Over $42,000 but not over $45,000	$3,000
Over $45,000 but not over $48,000	$2,000
Over $48,000 but not over $51,000	$1,000
Over $51,000	0.

C. For single individuals, for any taxable year beginning on or after January 1, 1987:

If adjusted gross income is:	The maximum amount of exemption allowable under this section shall be:
Not over $18,000	$8,000
Over $18,000 but not over $19,500	$7,000
Over $19,500 but not over $21,000	$6,000
Over $21,000 but not over $22,500	$5,000
Over $22,500 but not over $24,000	$4,000
Over $24,000 but not over $25,500	$3,000
Over $25,500 but not over $27,000	$2,000
Over $27,000 but not over $28,500	$1,000
Over $28,500	0.

(Laws 1987, Chapter 264, Section 6)

3.3.4.9 APPORTIONMENT OF SECTION 7-2-5.2 NMSA 1978 EXEMPTION

A. Any individual who is blind or sixty-five years of age or older, who has income both within and without this state and who claims the exemption provided by Section 7-2-5.2 NMSA 1978 shall apportion the exemption amount claimed in accordance with this section (3.3.4.9 NMAC).

B. For taxable years beginning in 1987, 1988 or 1989, apportionment shall be accomplished by reducing the individual's deduction for non-New Mexico income by an amount equal to the product of the maximum allowable amount for the individual's filing status and adjusted gross income multiplied by the percentage of non-New Mexico income computed on the individual's New Mexico income tax return or any schedules or attachments thereto.

(1) Example 1: X is a single individual over sixty-five years of age whose total adjusted gross income is $19,000. Thirty percent of X's adjusted gross income is non-New Mexico income. X must reduce X's non-New Mexico income by $2,100, computed as follows:

Maximum allowable amount for a single individual with $19,000 AGI		$ 7,000
30% x $7,000		x .30
Adjustment to non-New Mexico Income	$ 2,100	

(2) Example 2: A and B are married and file a joint return. A is over 65. B is 62 and blind. 10% of their $25,000 adjusted gross income is from outside New Mexico. A & B must reduce their non-New Mexico income by an amount of 1,600 computed as follows:

Maximum allowable amount per individual for a married couple filing jointly with $25,000 AGI	$ 8,000	
Multiply by 2 since both individuals qualify		x 2
		$16,000
10% x $16,000	x .10	
Adjustment to non-New Mexico Income	$ 1,600	

C. For taxable years beginning on or after January 1, 1990, apportionment is accomplished in the process of determining tax due and the amount of the credit available pursuant to Subsection C of Section 7-2-11 NMSA 1978. Accordingly, no separate process is necessary to apportion the exemption provided by Section 7-2-5.2 NMSA 1978.

D. This version of this section (3.3.4.9 NMAC) is retroactively applicable to taxable years beginning on or after January 1, 1990.

[3/3/89, 12/29/89, 3/16/92, 1/15/97; 3.3.4.9 NMAC - Rn & A, 3 NMAC 3.4.9, 12/14/00]

7-2-5.3. REPEALED MAY 16, 1990

7-2-5.4. REPEALED JANUARY 1, 2007

7-2-5.5. EXEMPTION; EARNINGS BY INDIANS, THEIR INDIAN SPOUSES AND INDIAN DEPENDENTS ON INDIAN LANDS.

Income earned by a member of a New Mexico federally recognized Indian nation, tribe, band or pueblo, the member's spouse or dependent, who is a member of a New Mexico federally recognized Indian nation, tribe, band or pueblo, is exempt from state income tax if the income is earned from work performed within and the member, spouse or dependent is domiciled within the

boundaries of the Indian member's or the spouse's reservation or pueblo grant or within the boundaries of land defined as "Indian country" pursuant to 18 U.S.C. Section 1151, as that section may be amended or renumbered, for that nation, tribe, band or pueblo.
(Laws 2023, Chapter 85, Section 7)

3.3.4.12 PENSION INCOME OF TRIBAL MEMBERS AND SPOUSES WHO ARE TRIBAL MEMBERS

A. For the purposes of Section 7-2-5.5 NMSA 1978, pension income of a New Mexico resident who is a member of an Indian nation, tribe or pueblo and who resides on the tribal territory of the resident’s or the spouse’s Indian nation, tribe or pueblo is qualified for the exemption provided by Section 7-2-5.5 NMSA 1978 to the extent the pension derives from the resident’s employment within the boundaries of the resident’s or the spouse’s Indian nation, tribe or pueblo during marriage to that spouse.

B. A pension received from the United States armed forces qualifies for the exemption provided by Section 7-2-5.5 NMSA 1978 to the extent the pension derives from service of the resident while stationed on the tribal territory of the resident’s or, during the marriage, the spouse’s Indian nation, tribe or pueblo or while the resident’s home of record was on the tribal territory of the resident’s or, during the marriage, the spouse’s Indian nation, tribe or pueblo.

C. Except for wages and pensions described in Subsections A and B of this section, income received by a member of an Indian nation, tribe or pueblo while the member resides in New Mexico on the tribal territory of the member’s or the spouse’s Indian nation, tribe or pueblo generally is net income subject to New Mexico income tax and generally is not exempt under Section 7-2-5.5 NMSA 1978. To the extent, however, the income derives from property or activities on the tribal territory of the member’s or, during the marriage, the spouse’s Indian nation, tribe or pueblo, the income may be excluded from net income only to the extent state taxation is prohibited by federal law. For example, rents from property owned by the member on the tribal territory of the member’s Indian nation, tribe or pueblo are excluded from net income but rents from property not on tribal territory are not. If a negligible portion of the income derives from property or activities on the tribal territory of the member’s or spouse’s Indian nation, tribe or pueblo, the entire amount is net income.

D. For the purposes of this regulation, “spouse” means an individual who is a member of an Indian nation, tribe or pueblo and is married to the resident or member of an Indian nation, tribe or pueblo.
[3.3.4.12 NMAC - N, 5/15/01]

7-2-5.6. EXEMPTION; MEDICAL CARE SAVINGS ACCOUNTS.

Except as provided in Section 6 of this act, employer and employee contributions to medical care savings accounts established pursuant to the Medical Care Savings Account Act, the interest earned on those accounts and money reimbursed to an employee for eligible medical expenses from those accounts or money advanced to the employee by the employer for eligible medical expenses pursuant to that act are exempt from taxation.
(Laws of 1995, Chapter 93, Section 8)

3.3.4.11 MEDICAL CARE SAVINGS ACCOUNT AMOUNTS

Any amount exempt from taxation under the Income Tax Act by the provisions of the Medical Care Savings Account Act that is excluded, exempted or deducted in determining federal taxable income may not be deducted from base income in determining net income. With respect to such an amount, the exemption under Section 7-2-5.6 NMSA 1978 is provided through the process of determining federal taxable income.

[9/15/97; 3.3.4.11 NMAC - Rn & A, 3 NMAC 3.4.11, 12/14/00]

7-2-5.7. EXEMPTION; INCOME OF INDIVIDUALS ONE HUNDRED YEARS OF AGE OR OLDER.

The income of an individual who is a natural person, who is one hundred years of age or older and who is not a dependent of another individual is exempt from state income tax.
(Laws 2002, Chapter 58, Section 1)

7-2-5.8. EXEMPTION FOR LOW- AND MIDDLE-INCOME TAXPAYERS.

A. An individual may claim an exemption in an amount specified in Subsections B through D of this section not to exceed an amount equal to the number of federal exemptions multiplied by two thousand five hundred dollars ($2,500) of income includable, except for this exemption, in net income.

B. For a married individual filing a separate return with adjusted gross income up to twenty-seven thousand five hundred dollars ($27,500):

(1) if the adjusted gross income is not over fifteen thousand dollars ($15,000), the amount of the exemption pursuant to this section shall be two thousand five hundred dollars ($2,500) for each federal exemption; and

(2) if the adjusted gross income is over fifteen thousand dollars ($15,000) but not over twenty-seven thousand five hundred dollars ($27,500), the amount of the exemption pursuant to this section for each federal exemption shall be calculated as follows:

(a) two thousand five hundred dollars ($2,500); less

(b) twenty percent of the amount obtained by subtracting fifteen thousand dollars ($15,000) from the adjusted gross income.

C. For single individuals with adjusted gross income up to thirty-six thousand six hundred sixty-seven dollars ($36,667):

(1) if the adjusted gross income is not over twenty thousand dollars ($20,000), the amount of the exemption pursuant to this section shall be two thousand five hundred dollars ($2,500) for each federal exemption; and

(2) if the adjusted gross income is over twenty thousand dollars ($20,000) but not over thirty-six thousand six hundred sixty-seven dollars ($36,667), the amount of the exemption pursuant to this section for each federal exemption shall be calculated as follows:

(a) two thousand five hundred dollars ($2,500); less

(b) fifteen percent of the amount obtained by subtracting twenty thousand dollars ($20,000) from the adjusted gross income.

D. For married individuals filing joint returns, surviving spouses or for heads of households with adjusted gross income up to fifty-five thousand dollars ($55,000):

(1) if the adjusted gross income is not over thirty thousand dollars ($30,000), the amount of the exemption pursuant to this section shall be two thousand five hundred dollars ($2,500) for each federal exemption; and

(2) if the adjusted gross income is over thirty thousand dollars ($30,000) but not over fifty-five thousand dollars ($55,000), the amount of the exemption pursuant to this section for each federal exemption shall be calculated as follows:

(a) two thousand five hundred dollars ($2,500); less

(b) ten percent of the amount obtained by subtracting thirty thousand dollars ($30,000) from the adjusted gross income.

(Laws 2007, Chapter 45, Section 8)

7-2-5.9. EXEMPTION; UNREIMBURSED OR UNCOMPENSATED MEDICAL CARE EXPENSES OF INDIVIDUALS SIXTY-FIVE YEARS OF AGE OR OLDER.

A. Any individual sixty-five years of age or older may claim an additional exemption from income includable, except for this exemption, in net income in an amount equal to three thousand dollars ($3,000) for medical care expenses paid by the individual for that individual or for the individual's spouse or dependent during the taxable year if those medical care expenses exceed twenty-eight thousand dollars ($28,000) and if the medical care expenses are not reimbursed or compensated for by insurance or otherwise.

B. As used in this section:

(1) "dependent" means "dependent" as defined in Section 152 of the Internal Revenue Code;

(2) "health care facility" means a hospital, outpatient facility, diagnostic and treatment center, rehabilitation center, freestanding hospice or other similar facility at which medical care is provided;

(3) "medical care" means the diagnosis, cure, mitigation, treatment or prevention of disease or for the purpose of affecting any structure or function of the body;

(4) "medical care expenses" means amounts paid for:

(a) the diagnosis, cure, mitigation, treatment or prevention of disease or for the purpose of affecting any structure or function of the body if provided by a physician or in a health care facility;

(b) prescribed drugs or insulin;

(c) qualified long-term care services as defined in Section 7702B(c) of the Internal Revenue Code;

(d) insurance covering medical care, including amounts paid as premiums under Part B of Title 18 of the Social Security Act or for a qualified long-term care insurance contract defined in Section 7702B(b) of the Internal Revenue Code, if the insurance or other amount is paid from income included in the taxpayer's adjusted gross income for the taxable year;

(e) specialized treatment or the use of special therapeutic devices if the treatment or device is prescribed by a physician and the patient can show that the expense was incurred primarily for the prevention or alleviation of a physical or mental defect or illness; and

(f) care in an institution other than a hospital, such as a sanitarium or rest home, if the principal reason for the presence of the person in the institution is to receive the medical care available; provided that if the meals and lodging are furnished as a necessary part of such care, the cost of the meals and lodging are "medical care expenses";

(5) "physician" means a medical doctor, osteopathic physician, dentist, podiatrist, chiropractic physician or psychologist licensed or certified to practice in New Mexico; and

(6) "prescribed drug" means a drug or biological that requires a prescription of a physician for its use by an individual.

(Laws 2005, Chapter 104, Section 6)

7-2-5.10. EXEMPTION; NEW MEXICO NATIONAL GUARD MEMBER PREMIUMS PAID FOR GROUP LIFE INSURANCE.

An individual who receives reimbursement from the service members' life insurance reimbursement fund may claim an exemption in the amount of that reimbursement, from income includable, except for this exemption, in net income.

(Laws 2006, Chapter 50, Section 1)

7-2-5.11. EXEMPTION; ARMED FORCES SALARIES.

A salary paid by the United States to a taxpayer for active duty service in the armed forces of the United States is exempt from state income taxation.
(Laws 2007, Chapter 45, Section 11)

7-2-5.12. REPEALED JUNE 16, 2023

7-2-5.13. EXEMPTION; ARMED FORCES RETIREMENT PAY.

A. An individual who is an armed forces retiree or the surviving spouse of an armed forces retiree may claim an exemption in an amount equal to thirty thousand dollars ($30,000) of armed forces retirement pay includable, except for this exemption, in net income.

B. As used in this section, "armed forces retiree" means a former member of the armed forces of the United States who has qualified by years of service or disability to separate from military service with lifetime benefits.
(Laws 2024, Chapter 67, Section 32)

7-2-5.14. EXEMPTION; SOCIAL SECURITY INCOME.

An individual may claim an exemption in an amount equal to the amount included in adjusted gross income pursuant to Section 86 of the Internal Revenue Code, as that section may be amended or renumbered, of income includable except for this exemption in net income; provided that the individual's adjusted gross income shall not exceed:

A. seventy-five thousand dollars ($75,000) for married individuals filing separate returns;

B. one hundred fifty thousand dollars ($150,000) for heads of household, surviving spouses and married individuals filing joint returns; and

C. one hundred thousand dollars ($100,000) for single individuals.
(Laws 2022, Chapter 47, Section 7)

7-2-6. REPEALED MAY 16, 1990

7-2-7. INDIVIDUAL INCOME TAX RATES.

The tax imposed by Section 7-2-3 NMSA 1978 shall be at the following rates for any taxable year beginning on or after January 1, 2025:

A. For married individuals filing joint returns, heads of household and surviving spouses:

For taxable income:	The tax shall be:
Not over $8,000	1.5% of taxable income
Over $8,000 but not over $25,000	$120 plus 3.2% of excess over $8,000
Over $25,000 but not over $50,000	$664 plus 4.3% of excess over $25,000
Over $50,000 but not over $100,000	$1,739 plus 4.7% of excess over $50,000
Over $100,000 but not over $315,000	$4,089 plus 4.9% of excess over $100,000
Over $315,000	$14,624 plus 5.9% of excess over $315,000.

B. For single individuals and for estates and trusts:

For taxable income:	The tax shall be:
Not over $5,500	1.5% of taxable income
Over $5,500 but not over $16,500	$82.50 plus 3.2% of excess over $5,500
Over $16,500 but not over $33,500	$434.50 plus 4.3% of excess over $16,500
Over $33,500 but not over $66,500	$1,165.50 plus 4.7% of excess over $33,500
Over $66,500 but not over $210,000	$2,716.50 plus 4.9% of excess over $66,500
Over $210,000	$9,748 plus 5.9% of excess over $210,000.

C. For married individuals filing separate returns:

For taxable income:	The tax shall be:
Not over $4,000	1.5% of taxable income
Over $4,000 but not over $12,500	$60.00 plus 3.2% of excess over $4,000
Over $12,500 but not over $25,000	$332 plus 4.3% of excess over $12,500
Over $25,000 but not over $50,000	$869.50 plus 4.7% of excess over $25,000
Over $50,000 but not over $157,500	$2,044.50 plus 4.9% of excess over $50,000
Over $157,500	$7,312 plus 5.9% of excess over $157,500.

D The tax on the sum of any lump-sum amounts included in net income is an amount equal to five multiplied by the difference between:

(1) the amount of tax due on the taxpayer's taxable income; and

(2) the amount of tax that would be due on an amount equal to the taxpayer's taxable income and twenty percent of the taxpayer's lump-sum amounts included in net income.
(Laws 2024, Chapter 67, Section 5)

3.3.7.8 PRORATION FOR FISCAL YEAR TAXPAYERS

A. A taxpayer whose taxable year ends on a date other than December 31 shall compute the tax on the tax taxable income for the entire fiscal year using both the old and the new rates. The final tax is the sum of that part of the old tax which is proportionate to that portion of the taxable year preceding the effective date of the new tax and that part of the new tax which is proportionate to that portion of the taxable year beginning with the effective date of the new tax rates.

B. Example 1: A taxpayer files a fiscal year return beginning October 1, 1982, and ending September 30, 1983. The tax taxable income for the entire fiscal year is $10,000. The taxpayer computes the tax due on the entire $10,000 based on the 1982 tax table and also computes the tax due on the entire $10,000 based on the 1983 tax table. As three months of the fiscal year were in 1982 and nine months were in 1983, the final tax is 1/4 of the tax computed based on the 1982 tax table plus 3/4 of the tax computed based on the 1983 tax table.

C. Example 2: A taxpayer files a fiscal year return beginning July 1, 1982, and ending June 30, 1983. The taxable income for the entire fiscal year is $50,000. The taxpayer computes the tax due on the entire $50,000 based on the 1983 tax rate. As six months of the fiscal year were in 1982 and six months were in 1983, the final tax is one half of the tax computed based on the 1982 tax table plus one half of the tax computed based on the 1983 tax table.
[1/6/84, 12/29/89, 3/16/92, 1/15/97; 3.3.7.8 NMAC - Rn, 3 NMAC 3.7.8, 12/14/00]

7-2-7.1. TAX TABLES.

In lieu of the tax rate computations required in Section 7-2-7 NMSA 1978, the secretary may adopt regulations requiring taxpayers to pay taxes in accordance with tax rate tables. The tax tables may be established either by regulation or by instruction but shall be computed substantially on the basis of the rates prescribed in Section 7-2-7 NMSA 1978. The secretary may by regulation or instruction exclude from the application of this section taxpayers having net incomes in excess of an amount to be determined by the secretary and may exclude taxpayers in any net-income class having more exemptions than the number of exemptions specified by the secretary for that category.
(Laws 1995, Chapter 11, Section 2)

3.3.7.9 TAX TABLES

A. For taxable years beginning on or after January 1, 1983, any taxpayer who files a personal income tax return on a calendar-year basis will be required to use the tax tables which are incorporated into the department's instructions for the personal income tax form for the specific calendar year, provided that the taxpayer's taxable income and number of personal exemptions are included within the tax table.

B. Taxpayers whose number of personal exemptions or whose taxable income is not included specifically within the tax tables are required to calculate income tax due by using the tax rate schedule set forth in Section 7-2-7 NMSA 1978.
[3/31/86, 12/29/89, 3/16/92, 1/15/97; 3.3.7.9 NMAC - Rn & A, 3 NMAC 3.7.9, 12/14/00]

3.3.7.10 CHANGES IN TAX RATES

In the event of a change in the tax rates, the instructions prepared by the department for the personal income tax forms will incorporate tax tables computed substantially on the basis of the rates prescribed in Section 7-2-7 NMSA 1978 for the year or years affected.
[3/31/86, 12/29/89, 3/16/92, 1/15/97; 3.3.7.10 NMAC - Rn & A, 3 NMAC 3.7.10, 12/14/00]

7-2-7.2 AND 7-2-7.3. REPEALED JULY 1, 2025

7-2-7.4. 2020 INCOME TAX REBATE.

A. A resident who is not a dependent of another individual and has received a working families tax credit for which the taxpayer was eligible to claim against the resident's income tax liability for taxable year 2020 may be eligible for a tax rebate of six hundred dollars ($600); provided that the resident had the following adjusted gross income for taxable year 2020:

(1) for single individuals, an adjusted gross income of thirty-one thousand two hundred dollars ($31,200) or less; and

(2) for heads of household, surviving spouses and married individuals filing joint returns, an adjusted gross income of thirty-nine thousand dollars ($39,000) or less.

B. The rebate provided by this section may be deducted from the taxpayer's New Mexico income tax liability.

C. If the amount of rebate exceeds the taxpayer's income tax liability, the excess shall be refunded to the taxpayer.

D. The department may require a taxpayer to claim the rebate provided by this section on forms and in a manner required by the department.

E. The rebate provided by this section shall not be allowed after June 30, 2022.
(Laws 2021, Chapter 4, Section 2.)

7-2-7.5. SUPPLEMENTAL 2021 INCOME TAX REBATES.

A. A resident who files an individual New Mexico income tax return for taxable year 2021 by May 31, 2023 and who is not a dependent of another individual is eligible for two tax rebates pursuant to this section; provided that the resident did not receive a relief payment pursuant to Section 2 of this 2022 act.

B. For a resident who files an income tax return by May 31, 2022:

(1) the first tax rebate shall be made as soon as possible, but no later than June 30, 2022, in the following amounts:

(a) five hundred dollars ($500) for heads of household, surviving spouses and married individuals filing joint returns; and

(b) two hundred fifty dollars ($250) for single individuals and married individuals filing separate returns; and

(2) the second tax rebate shall be made between August 1 and August 30, 2022 in the following amounts:

(a) five hundred dollars ($500) for heads of household, surviving spouses and married individuals filing joint returns; and

(b) two hundred fifty dollars ($250) for single individuals and married individuals filing separate returns.

C. For a resident who files an income tax return for taxable year 2021 after May 31, 2022, rebates shall be made in the amounts and as provided in Subsection B of this section as soon as possible after the return is received; provided that a rebate shall not be allowed for a return filed after May 31, 2023.

D. The rebates provided by this section may be deducted from the taxpayer's New Mexico income tax liability for taxable year 2021. If the amount of rebate exceeds the taxpayer's income tax liability, the excess shall be refunded to the taxpayer.

E. The department may require a taxpayer to claim a rebate provided by this section on forms and in a manner required by the department.

(Laws 2022 SS, Chapter 2, Section 1)

7-2-7.6. 2021 INCOME TAX REBATE.

A. A resident who is not a dependent of another individual is eligible for a tax rebate of:

(1) five hundred dollars ($500) for heads of household, surviving spouses and married individuals filing joint returns with adjusted gross income of less than one hundred fifty thousand dollars ($150,000); and

(2) two hundred fifty dollars ($250) for single individuals and married individuals filing separate returns with adjusted gross income of less than seventy-five thousand dollars ($75,000).

B. The rebate provided by this section may be deducted from the taxpayer's New Mexico income tax liability for taxable year 2021.

C. If the amount of rebate exceeds the taxpayer's income tax liability, the excess shall be refunded to the taxpayer.

D. The department may require a taxpayer to claim the rebate provided by this section on forms and in a manner required by the department.

E. The rebate provided by this section shall not be allowed after June 30, 2023.

(Laws 2022, Chapter 47, Section 4)

7-2-7.7. ADDITIONAL 2021 INCOME TAX REBATES.

A. A resident who files an individual New Mexico income tax return for taxable year 2021 and who is not a dependent of another individual is eligible for a tax rebate pursuant to this section in the following amounts:

(1) one thousand dollars ($1,000) for heads of household, surviving spouses and married individuals filing joint returns; and

(2) five hundred dollars ($500) for single individuals and married individuals filing separate returns.

B. The rebates shall be made as soon as practicable after a return is received; provided that a rebate shall not be allowed for a return filed after May 31, 2024.

C. The rebates provided by this section may be deducted from the taxpayer's New Mexico income tax liability for taxable year 2021. If the amount of rebate exceeds the taxpayer's income tax liability, the excess shall be refunded to the taxpayer.

D. The department may require a taxpayer to claim a rebate provided by this section on forms and in a manner required by the department.

(Laws 2023, Chapter 211, Section 11)

7-2-8. REPEALED JUNE 19, 1981

7-2-9. 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 state income tax due.

(Laws 1990, Chapter 49, Section 4)

7-2-10. INCOME TAXES APPLIED TO INDIVIDUALS ON FEDERAL AREAS.

To the extent permitted by law, no individual shall be relieved from liability for income tax by reason of his residing within a federal area or receiving income from transactions occurring or work or services performed in such area.

(Laws 1981, Chapter 37, Section 20)

7-2-11. TAX CREDIT; INCOME ALLOCATION AND APPORTIONMENT.

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

(1) during the first taxable year in which an individual incurs tax liability as a resident, only income earned on or after the date the individual became a resident and, in addition, income earned in New Mexico while a nonresident of New Mexico shall be allocated to New Mexico;

(2) except as provided otherwise in Paragraph (1) of this subsection, income other than compensation or gambling winnings shall be allocated and apportioned as provided in the Uniform Division of Income for Tax Purposes Act, but if the income is not allocated or apportioned by that act, then it may be allocated or apportioned in accordance with instructions, rulings or regulations of the secretary;

(3) except as provided otherwise in Paragraph (1) of this subsection, compensation and gambling winnings of a resident taxpayer shall be allocated to this state;

(4) compensation of a nonresident taxpayer shall be allocated to this state to the extent that such compensation is for activities, labor or personal services within this state; provided that the compensation may be allocated to the taxpayer's state of residence:

(a) if the activities, labor or services are performed in this state for fifteen or fewer days during the taxpayer's taxable year;

(b) if the compensation is for activities, labor or services performed for a business in the manufacturing industry in New Mexico that is located within twenty miles of an international border, that has a minimum of five full-time employees who are New Mexico residents, that is not receiving development training funds under Section 21-19-7 NMSA 1978 and that meets the qualifications of one of Items 1) through 4) of this subparagraph: 1) the business had no payroll in New Mexico during the previous calendar year; 2) the business had a payroll in New Mexico for less than the entire previous calendar year, and the first payroll of the new calendar year includes payments to New Mexico residents exceeding the highest monthly payroll for such residents in the previous calendar year; 3) the business had a payroll in New Mexico for the entire previous calendar year, and the first payroll of the new calendar year includes payments to New Mexico residents exceeding by at least ten percent both the payroll for all employees in January 2001 and the payroll for New Mexico residents twelve months prior to the commencement of the new calendar year; or 4) the business had a payroll in New Mexico for the entire previous calendar year, but had no payroll in New Mexico within one year prior to January 1, 2001, and the first payroll of the new calendar year includes payments to New Mexico residents exceeding by at least ten percent the payroll for such residents twelve months earlier; or

(c) if the activities, labor or services are performed in this state for disaster- or emergency-related critical infrastructure work in response to a declared state disaster or emergency during a disaster response period, as defined in the Tax Administration Act;

(5) gambling winnings of a nonresident shall be allocated to this state if the gambling winnings arose from a source within this state; and

(6) other deductions and exemptions allowable in computing net 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.

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 7-2-7 or 7-2-7.1 NMSA 1978 multiplied by the non-New Mexico percentage.

(Laws 2016, Chapter 59, Section 1)

3.3.11.8 COMPUTATION FOR NON-RESIDENT TAXPAYERS WHO HAVE NEW MEXICO ROYALTY INCOME

A. A non-resident taxpayer whose only income from New Mexico sources is royalty income of less than five thousand dollars ($5,000) may elect to compute the New Mexico income tax due based on the gross royalty income received in lieu of filing a complete New Mexico tax return including the allocation and apportionment schedule. To figure taxable income, a taxpayer must add back the standard deduction, itemized deductions and personal exemption amounts excluded from net income under Section 7-2-2 NMSA 1978, Subsection N, Paragraphs (1) through (6) for taxable years beginning in 1987, 1988 or 1989 and Paragraphs (1) through (3) for taxable years beginning on or after January 1, 1990 to the gross royalty income and then, using the computed taxable income, must determine the tax due according to the tax table appropriate to filing status.

B. As originally filed, 3.3.11.8 NMAC applies to taxable years beginning on or after January 1, 1985. The amendment December 29, 1989 is given retroactive effect to taxable years beginning on or after January 1, 1987. The amendment filed March 16, 1992 is given retroactive effect to taxable years beginning on or after January 1, 1990.

[8/12/85, 12/29/89, 3/16/92, 1/15/97; 3.3.11.8 NMAC - Rn & A, 3 NMAC 3.11.8, 12/14/00]

3.3.11.9 APPORTIONMENT OF DEDUCTION AMOUNTS

A. Any individual who has income from both within and without this state and who claims the standard or itemized deductions provided by Section 7-2-2 NMSA 1978, Subsection N, Paragraphs (1) through (5) for taxable years beginning in 1987, 1988 or 1989 and Paragraphs (1) and (2) for taxable years beginning on or after January 1, 1990 shall apportion the deduction amount claimed in accordance with this section (3.3.11.9 NMAC).

B. For taxable years beginning in 1987, 1988 or 1989, apportionment shall be accomplished by reducing the amount deducted as non-New Mexico income by an amount equal to the product of the deduction amount multiplied by the percentage of non-New Mexico income computed on the individual's income tax return or any schedules or attachments thereto.

C. Example: A & B are married and file a joint return for taxable year 1988. For the purposes of 7-2-2N(5) NMSA 1978, they have $1,500 in New Mexico itemized deductions. Thirty percent of their income is calculated to be from outside New Mexico. They must reduce the amount of their deduction for non-New Mexico income by $1,650, computed as follows:

Deduction for married persons filing jointly		$4,000
New Mexico itemized deductions		1,500
Sub-Total		$5,500
30% x $5,500		x .30
Adjustment to non-New Mexico income	$1,650	

D. For taxable years beginning on or after January 1, 1990, apportionment is accomplished in the process of determining tax due and the amount of the credit available pursuant to Subsection C of Section 7-2-11 NMSA 1978 and so no separate process is necessary to apportion the deduction amounts.

E. This version of 3.3.11.9 NMAC is applicable retroactively to taxable years beginning on or after January 1, 1990.

[2/8/89, 12/29/89, 3/16/92, 1/15/97; 3.3.11.9 NMAC - Rn & A, 3 NMAC 3.11.9, 12/14/00]

3.3.11.10 APPORTIONMENT OF PERSONAL EXEMPTION AMOUNT

A. Any individual who has income from both within and without this state and who claims a personal exemption amount pursuant to Section 7-2-2 NMSA 1978, Subsection N, Paragraph (6) for taxable years beginning in 1987, 1988 or 1989 and Paragraph (3) for taxable years beginning on or after January 1, 1990 shall apportion the personal exemption amount claimed in accordance with this section (3.3.11.10 NMAC).

B. For taxable years beginning in 1987, 1988 or 1989, apportionment shall be accomplished by reducing the amount deducted as non-New Mexico income by an amount equal to the product of the personal exemption amount multiplied by the percentage of non-New Mexico income computed on the individual's income tax return or any schedules or attachments thereto.

C. Example: Z is a head of household with 2 dependent children. Twenty percent of Z's income for taxable year 1989 comes from outside New Mexico. Z must reduce the amount of deduction for non-New Mexico income by $1,200, computed as follows:

Personal exemption amount per 7-2-2N(6) NMSA 1978	$2,000	
Exemptions allowed for federal purposes		x 3
Sub-Total		$6,000
20% x $6,000		x .20
Adjustment to non-New Mexico income	$1,200	

D. For taxable years beginning on or after January 1, 1990, apportionment is accomplished in the process of determining tax due and the amount of the credit available pursuant to Subsection C of Section 7-2-11 NMSA 1978 and so no separate process is necessary to apportion the deduction amounts.

E. This version of Section 3.3.11.10 NMAC is applicable retroactively to taxable years beginning on or after January 1, 1990.

[2/8/89, 12/29/89, 3/16/92, 1/15/97; 3.3.11.10 NMAC - Rn & A, 3 NMAC 3.11.10, 12/14/00]

3.3.11.11 ALLOCATION OF COMPENSATION RECEIVED BY A RESIDENT

A. All compensation received while a resident of New Mexico shall be allocated to this state whether or not such compensation is earned from employment in this state.

B. Example 1: X is a "resident" of New Mexico pursuant to Section 7-2-2 NMSA 1978. For six weeks during the taxable year, X was employed in the state of Nevada where X received compensation for personal services rendered. During this six-week period, X did not return to the state of New Mexico. X points out that inasmuch as Nevada does not impose an income tax, X is not eligible for a tax credit pursuant to Section 7-2-13 NMSA 1978. X's compensation earned in Nevada is allocable to New Mexico. There is no specific exemption or deduction which would authorize X to exclude the compensation earned in Nevada from the New Mexico base income.

C. Example 2: Y is registered to vote in this state, lives in the Canal Zone, is not physically present in New Mexico for any part of the taxable year and earns income from sources both within and without the state of New Mexico. Y is a "resident" as that term is defined by Section 7-2-2 NMSA 1978, and is required to report and pay New Mexico income tax as a resident of New Mexico. Under the provisions of Section 7-2-11 NMSA 1978, Y is required to allocate all compensation earned to New Mexico and to allocate and apportion other items of income according to the provisions of the Uniform Division of Income for Tax Purposes Act.

[7/2/90, 3/16/92, 1/15/97; 3.3.11.11 NMAC - Rn & A, 3 NMAC 3.11.11, 12/14/00]

3.3.11.12 DISTRIBUTIVE SHARES OF INCOME FROM UNINCORPORATED BUSINESS ENTITIES

A. For the purposes of this section (3.3.11.12 NMAC), the term "unincorporated business entity" means any person engaging in business other than an individual, a sole proprietor or a corporation, except that corporations or other business entities electing to be treated as partnerships for federal income tax purposes are unincorporated business entities.

B. A taxpayer's distributive share of nonbusiness and business income shall be allocated and apportioned in accordance with this section (3.3.11.12 NMAC) to determine the portion of the distributive share of income taxable under the New Mexico Income Tax Act unless the taxpayer is qualified to elect, and has elected, to report the income in accordance with 3.3.11.8 NMAC.

C. The taxpayer shall allocate the taxpayer's distributive share of the unincorporated business entity's nonbusiness income to that taxpayer's state of residence in accordance with Sections 7-4-5 through 7-4-8 NMSA 1978. If the unincorporated business entity fails to provide the taxpayer with information distinguishing nonbusiness income from business income, the entire distribution from the unincorporated business entity must be considered business income and none of the income will be subject to allocation.

D. The taxpayer shall apportion the taxpayer's distributive share of the unincorporated business entity's business income to New Mexico by multiplying the taxpayer's distributive share times the New Mexico apportionment percentage determined by application of the Uniform Division of Income for Tax Purposes Act to the entire business income of the unincorporated business entity. If the unincorporated business entity fails to provide the taxpayer with the necessary New Mexico apportionment percentage or information sufficient to enable the taxpayer to calculate the percentage, the taxpayer shall apportion the taxpayer's entire distributive

share of business income as if all of the entity's activities, property, payroll and sales were in New Mexico.
[7/2/90, 3/16/92, 1/15/97; 3.3.11.12 NMAC - Rn & A, 3 NMAC 3.11.12, 12/14/00]

3.3.11.13 RETIREMENT INCOME

A. "Retirement income" as used in this regulation means "retirement income" as defined by 4 U.S.C. Section 114(b)(1), as that paragraph may be amended or renumbered. Retirement income is compensation for purposes of the Income Tax Act.

B. Retirement income of a resident is allocable to New Mexico, regardless of the source of the retirement income, where it is paid from or whether the resident was a resident of New Mexico at the time of the employment which gave rise to the income. Retirement income received by a first-year resident after the first-year resident becomes a resident of New Mexico is allocable to New Mexico.

C. Retirement income of a non-resident is allocable to the non-resident's state of residence regardless of the fact that the income is paid by or derived from a source in New Mexico or the employment giving rise to the income took place in New Mexico. Retirement income received by a first-year resident before the first-year resident becomes a resident of New Mexico is not allocable to New Mexico.
[12/15/99; 3.3.11.13 NMAC - Rn, 3 NMAC 3.11.13, 12/14/00]

3.3.11.14 INCOME FROM TRADING SECURITIES ON OWN ACCOUNT

A. Income of an individual, other than a dealer holding securities for sale to customers in the ordinary course of the dealer’s trade or business, from the purchase or sale of securities for the individual’s own account or from the writing of securities option contracts for the individual’s own account is deemed to be income other than income from engaging in a trade or business. The income is allocable to the individual’s state of residence.

B. Income of an investment entity from the purchase or sale of securities for the entity’s own account or from the writing of securities option contracts in the entity’s own account is deemed to be income other than income from engaging in a trade or business. The income attributable to each of the entity’s owners is allocable to that owner’s state of residence.

C. For the purposes of this regulation, the term “investment entity” means a pass-through entity, as that term is defined in Section 7-3-2 NMSA 1978, meeting the following criteria:

(1) the entity is not a dealer holding securities for sale to customers in the ordinary course of the entity’s trade or business;

(2) each of the entity’s owners during the taxable year is an individual; and

(3) ninety percent or more of the entity’s income during the taxable year derives from the purchase or sales of securities or from writing of securities option contracts.
[3.3.11.14 NMAC - N, 3/14/01]

7-2-12. TAXPAYER RETURNS; PAYMENT OF TAX.

Every resident of this state and every individual deriving income from any business transaction, property or employment within this state and not exempt from tax under the Income Tax Act who 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. A resident or any individual who is required by the provisions of the Income Tax Act to file a return or pay a tax shall, on or before the due date of the resident's or individual's federal income tax return for the taxable year, file the return and pay the tax imposed for that year.
(Laws 2025, Chapter 130, Section 36)

3.3.12.9 REQUIREMENTS FOR THE PREPARATION OF ACCEPTABLE REPRODUCTIONS OF NEW MEXICO INCOME TAX FORMS

A. The purpose of this regulation is to state the requirements for the acceptance of reproduced or privately printed New Mexico individual income tax return forms (i.e., PIT-1, PIT-B, PIT-CG, PIT-D, PIT-RC and other related schedules). Subject to the specifications and conditions enumerated in this regulation, the department will accept for filing reproduced or privately printed New Mexico individual income tax return forms.

B. Specifications.

(1) Reproduced or privately printed New Mexico individual income tax forms and related schedules shall be identical to the forms and schedules furnished by the department. The format must be exact; target marks and bar codes must be included. These conditions are critical because the department uses imaging technology for data capture which requires definition of placement for each data field, and uses target marks to make sure forms are properly aligned for imaging. If the form or schedule furnished by the department is printed on both sides of the paper, it is preferred that both sides of the paper be used in making reproductions. However, the department will not object if the form is not printed back-to-back, provided page 2 face-to-back of page 1 is printed so the form will be readable left to right without flipping top to bottom (head-to-head).

(2) All reproduced or privately printed tax forms must include space for the preparer's signature (other than taxpayer) and the preparer's taxation and revenue department identification number or social security number.

(3) Drop-out colors may not be possible when using some PC applications, or when using templates. Because drop-out colors do facilitate the data capture process, increasing both speed and accuracy, the department strongly recommends, but does not require their use in reproduced or privately printed forms. Vendors wishing to include a drop-out color should contact the department for color specifications.

(4) Reproduced or privately printed tax forms, except for Form PIT-P, must be on 8-1/2" by 11" good quality standard stock machine stationery not less than 0.0030 inch thick (20 lb. paper). All printing shall be black ink on white paper. Form PIT-P must meet these same standards except that the size of the form is 8-1/2" by 3-3/4".

(5) Reproduced or privately printed tax forms shall have a high standard of legibility. The department will reject any substitutes which are not legible for microfilm purposes.

C. Conditions and other requirements.

(1) Reproductions which do not meet the requirements of the department may not be filed in lieu of the official forms and schedules. Supporting statements shall provide detail and explain entries, shall furnish all required information in the same sequence as called for on the official forms or schedules, and shall be attached to the form or schedule in the same order as the entries appear on the official forms or schedule. Supporting statements shall conform to the size of the form or schedule to which they apply. The totals on all supporting statements shall also be entered on the appropriate official form or schedule.

(2) The department ordinarily does not undertake to approve or disapprove the specific equipment or process used in reproducing official forms, but requires only that the reproduced forms and schedules satisfy the conditions stated in this regulation.

(3) Taxpayer(s) and preparer signature(s) on forms to be filed with the department must be original signatures. Only the tax practitioner's firm name and taxation and revenue department identification number or social security number can be a facsimile (stamp), or preprinted.

(4) Reproduction of forms and schedules meeting the above conditions may be used without prior approval of the department. However, if specific approval of a reproduction of any such form or schedule is desired or if the use of a reproduction of any form or schedule not listed herein or otherwise specifically authorized is desired, forward a sample of the proposed

reproduction by letter to the department.

(5) Internal control numbers and identifying symbols may be shown on the reproduced or privately printed forms if the use of such numbers or symbols is acceptable to the taxpayer or his representative. If shown, such information may be printed only in the margin at the top of the form and must not interfere with any of the format on the form.

D. This regulation is applicable to taxable years beginning on or after January 1, 1995.

[4/18/84, 12/29/89, 3/16/92, 1/31/96; 3.3.12.9 NMAC - Rn & A, 3 NMAC 3.12.9, 12/14/00]

3.3.12.10 REQUIREMENTS FOR THE ACCEPTANCE OF COMPUTER-GENERATED INCOME TAX FORMS AND RELATED SCHEDULES

A. The purpose of this regulation is to state the requirements for the acceptance of computer-generated New Mexico individual income tax return forms (i.e., PIT-1, PIT-B, PIT-CG, PIT-D, PIT-RC and other related schedules). Subject to the specifications and conditions enumerated in this regulation, the department will accept for filing computer-prepared New Mexico individual income tax return forms.

B. Specifications.

(1) Margins on computer generated forms shall be consistent with margins on forms furnished by the department. A full scale definition may be obtained from the department.

(2) All computer generated tax forms must include space for the preparer's signature (other than taxpayer) and the preparer's taxation and revenue department identification or social security number.

(3) Drop-out colors are not required on computer-generated forms. Persons wishing to include a drop-out color should contact the department for color specifications.

(4) Computer-generated tax forms must be on 8 1/2" by 11" good quality standard stock machine stationery not less than 0.0030 inch thick (20 lb. paper). The image size of printed material shall be as close as possible to that of the official form.

(5) The format must be exact; target marks and bar codes must be included. These conditions are critical because the department uses imaging technology for data capture which requires definition of placement for each data field, and uses target marks to make sure forms are properly aligned for imaging.

(6) Line instructions may be omitted, but all line numbers and items shall be printed even though the amount entered may be zero.

(7) All computer-generated forms shall be printed back-to-back or page 2 face-to-back of page 1 so the form will be readable left to right without flipping top to bottom (head-to-head).

(8) Computer-generated forms shall have a high standard of legibility. The department will reject any substitutes which are not legible for microfilm purposes.

(9) An asterisk (*) or other accepted symbol shall appear on the computer-generated form to designate those lines which are identified on the official form through the use of a solid triangle.

(10) The computer generated form must provide the necessary number of "For Department Use Only" squares on the right margin. The specific number of "For Department Use Only" boxes, and their placement, for any taxable year may be obtained by contacting the department.

C. Conditions and additional requirements.

(1) All formats must receive prior approval from the secretary or the secretary's delegate.

(2) Internal control numbers and identifying symbols of the computer form preparer may be shown on the form if the use of such numbers or symbols is acceptable to the

taxpayer or the taxpayer's representative. If shown, such information may be printed only in the margin at the top of the form and must not interfere with any of the format on the form.

(3) Negative line entries must be properly identified by indicating negative amounts in parentheses or brackets, i.e., "( )" or "[ ]".

(4) Taxpayer(s)' and preparer signature(s) on forms to be filed with the department must be original signatures. Only the tax practitioner's firm name and taxation and revenue department identification number or social security number can be a facsimile (stamp) or preprinted.

D. This regulation is applicable to taxable years beginning on or after January 1, 1995.

[9/4/87, 12/29/89, 3/16/92, 1/31/96; 3.3.12.10 NMAC - Rn, 3 NMAC 3.12.10, 12/14/00]

3.3.12.11 FILING OF TENTATIVE INCOME TAX RETURNS NOT ALLOWED
The filing of a "tentative" return is not allowed by taxpayers filing New Mexico income tax returns within the meaning of Section 7-2-12 NMSA 1978. Taxpayers wishing to make a prepayment of their tentative or estimated tax liability prior to the due date of the return should use a prepayment form PIT-P. The instructions on the form PIT-P should be followed carefully to ensure that any prepayment is applied to the correct taxable year. This regulation is applicable to taxable years beginning on or after January 1, 1995.

[3/16/92, 6/24/93, 1/31/96; 3.3.12.11 NMAC - Rn & A, 3 NMAC 3.12.11, 12/14/00]

3.3.12.12 FILING STATUS; TAXPAYER NAME

A. A taxpayer filing a New Mexico income tax return shall use the same filing status for New Mexico purposes as for federal purposes for the taxable year. Spouses using the status "married filing jointly" for federal purposes must use the same status for New Mexico purposes; those using the status "married filing separately" for federal purposes must do likewise for New Mexico.

B. Spouses who report income to the federal government for income tax purposes using different last names, whether they report jointly or separately, must report their income to New Mexico using the same names as used on the federal return. Spouses who report to the United States under one surname must also report to New Mexico under the same surname.

[7/20/90, 3/16/92, 1/15/97; 3.3.12.12 NMAC - Rn, 3 NMAC 3.12.12, 12/14/00]

3.3.12.13 ELECTRONICALLY FILED RETURNS
A taxpayer, a taxpayer's representative or a tax return preparer may file the personal income tax return and associated schedules in an electronic format that meets all criteria for filing through an electronic media as set forth by the department. Returns filed through an electronic media must use computer programming determined by the department to be compatible with the computer programming and equipment used by the department for processing income tax returns. The returns must be submitted in an approved format using a computer language designated by the department. The product used to generate the electronic return must receive prior approval from the department for the method of filing.

[7/20/90, 3/16/92, 1/15/97; 3.3.12.13 NMAC - Rn & A, 3 NMAC 3.12.13, 12/14/00; A, 1/31/08]

7-2-12.1. LIMITATION ON CLAIMING OF CREDITS AND TAX REBATES.

A. Except as provided otherwise in this section, a credit or tax rebate provided in the Income 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 tax rebate was first claimable was initially due.

B. Subsection A of this section does not apply to the credit authorized by Section 7-2-13 NMSA 1978 for income taxes paid another state.
(Laws 2025, Chapter 130, Section 37)

7-2-12.2. ESTIMATED TAX DUE; PAYMENT OF ESTIMATED TAX; PENALTY.

A. Except as otherwise provided in this section, an individual who is required to file an income tax return under the Income Tax Act shall pay the required annual payment in installments through either withholding or estimated tax payments.

B. For the purposes of this section:

(1) "required annual payment" means the lesser of:

(a) ninety percent of the tax shown on the return of the taxable year or, if no return is filed, ninety percent of the tax for the taxable year; or

(b) one hundred percent of the tax shown on the return for the preceding taxable year if the preceding taxable year was a taxable year of twelve months and the taxpayer filed a New Mexico tax return for that preceding taxable year; and

(2) "tax" means the tax imposed under Section 7-2-3 NMSA 1978 less any amount allowed for applicable credits and rebates provided by the Income Tax Act.

C. There shall be four required installments for each taxable year. If a taxpayer is not liable for estimated tax payments on March 31, but becomes liable for estimated tax at some point after March 31, the taxpayer must make estimated tax payments as follows:

(1) if the taxpayer becomes required to pay estimated tax after March 31 and before June 1, fifty percent of the required annual payment must be paid on or before June 15, twenty-five percent on September 15 and twenty-five percent on or before January 15 of the following taxable year;

(2) if the taxpayer becomes required to pay estimated tax after May 31, but before September 1, the taxpayer must pay seventy-five percent of the required annual payment on or before September 15 and twenty-five percent on or before January 15 of the following taxable year; and

(3) if the taxpayer becomes required to pay estimated tax after August 31, the taxpayer must pay one hundred percent of the required annual payment on or before January 15 of the following taxable year.

D. Except as otherwise provided in this section, for taxpayers reporting on a calendar year basis, estimated payments of the required annual payment are due on or before April 15, June 15 and September 15 of the taxable year and January 15 of the following taxable year. For taxpayers reporting on a fiscal year other than a calendar year, the due dates for the installments are the fifteenth day of the fourth, sixth and ninth months of the fiscal year and the fifteenth day of the first month following the fiscal year.

E. A rancher or farmer who expects to receive at least two-thirds of the rancher's or farmer's gross income for the taxable year from ranching or farming, or who has received at least two-thirds of the rancher's or farmer's gross income for the previous taxable year from ranching or farming, may:

(1) pay the required annual payment for the taxable year in one installment on or before January 15 of the following taxable year; or

(2) on or before March 1 of the following taxable year, file a return for the taxable year and pay in full the amount computed on the return as payable. A penalty under Subsection G of this section shall not be imposed unless the rancher or farmer underpays the tax by more than one-third. If a joint return is filed, a rancher or farmer must consider the rancher's or farmer's spouse's gross income in determining whether at least two-thirds of gross income is from ranching or farming.

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 part 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 that 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 wage withholding and any other 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.

G. Except as otherwise provided in this section, in the case of an underpayment of the required annual payment by a taxpayer, there shall be added to the tax a penalty determined by applying the rate specified in Subsection B of Section 7-1-67 NMSA 1978 to the amount of the underpayment for the period of the underpayment, provided:

(1) the amount of the underpayment shall be the excess of the amount of the required annual payment over the amount, if any, paid on or before the due date for the installment;

(2) the period of the underpayment runs from the due date for the installment to whichever of the following dates is earlier:

(a) the fifteenth day of the fourth month following the close of the taxable year; or

(b) with respect to any portion of the underpayment, the date on which the portion was paid; and

(3) a payment of estimated tax shall be credited against unpaid or underpaid installments in the order in which the installments are required to be paid.

H. No penalty shall be imposed under Subsection G of this section for any taxable year if:

(1) the difference between the following is less than one thousand dollars ($1,000):

(a) the tax shown on the return for the taxable year or, when no return is filed, the tax for the taxable year; and

(b) any amount withheld under the provisions of the Withholding Tax Act or the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act for that taxpayer for that taxable year;

(2) the taxpayer's preceding taxable year was a taxable year of twelve months, the taxpayer did not have a tax liability for the preceding taxable year and the taxpayer was a resident of New Mexico for the entire taxable year;

(3) through either withholding or estimated tax payments, the taxpayer paid the required annual payment as defined in Subsection B of this section; or

(4) the secretary determines that the underpayment was not due to fraud, negligence or disregard of rules and regulations.

I. If on or before January 31 of the following taxable year the taxpayer files a return for the taxable year and pays in full the amount computed on the return as payable, then a penalty under Subsection G of this section shall not be imposed on an underpayment of the fourth required installment for the taxable year.

J. This section applies to taxable years of less than twelve months and to taxpayers reporting on a fiscal year other than a calendar year in the manner determined by regulation or instruction of the secretary.

K. Except as otherwise provided in Subsection L of this section, this section applies to any estate or trust.

L. This section does not apply to any trust that is subject to the tax imposed by Section 511 of the Internal Revenue Code or that is a private foundation. For a taxable year that ends before the date two years after the date of the decedent's death, this section does not apply to:

(1) the estate of the decedent; or

(2) any trust all of which was treated under Subpart E of Part I of Subchapter J of Chapter 1 of the Internal Revenue Code as owned by the decedent and to which the residue of the decedent's estate will pass under the decedent's will or, if no will is admitted to probate, that is the trust primarily responsible for paying debts, taxes and expenses of administration.

M. The provisions of this section do not apply to first-year residents.

(Laws 2011, Chapter 116, Section 1 – Applicable to tax years beginning on or after January 1, 2012)

3.3.12.15 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 a 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 person subject to personal income tax and has an obligation to pay estimated tax pursuant to Section 7-2-12.2 NMSA 1978, the person may not credit the amounts it withheld under Section 7-3A-3 NMSA 1978 from payments the person owes to remittees or owners against the person'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.

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

7-2-13. CREDIT FOR TAXES PAID OTHER STATES BY RESIDENT INDIVIDUALS.

A. When a resident individual is liable to another state for tax upon income derived from sources outside this state but also included in net income under the Income Tax Act as income allocated or apportioned to New Mexico pursuant to Section 7-2-11 NMSA 1978, the individual, upon filing with the secretary satisfactory evidence of the payment of the tax to the other state, shall receive a credit against the tax due this state in the amount of the tax paid the other state with respect to income that is required to be either allocated or apportioned to New Mexico. However, in no case shall the credit exceed the amount of the taxpayer's New Mexico income tax liability on that portion of income that is required to be either allocated or apportioned to New Mexico on which the tax payable to the other state was determined. The credit provided by this section does not apply to or include income taxes paid to any municipality, county or other political subdivision of a state.

B. The credit allowed pursuant to Subsection A of this section shall be calculated without regard to the credit allowed pursuant to Section 7-3A-10 NMSA 1978.

(Laws 2023, Chapter 159, Section 2)

7-2-14. LOW INCOME COMPREHENSIVE TAX REBATE.

A. Except as otherwise provided in Subsection B of this section, any resident who files an individual New Mexico income tax return and who is not a dependent of another individual may claim a tax rebate for a portion of state and local taxes to which the resident has been subject during the taxable year for which the return is filed. The tax rebate may be claimed even though the resident has no income taxable under the Income Tax Act. Married individuals who file separate returns for a taxable year in which they could have filed a joint return may each claim only one-half of the tax rebate that would have been allowed on a joint return.

B. No claim for the tax rebate provided in this section shall be filed by a resident who was an inmate of a public institution for more than six months during the taxable year for which the tax rebate could be claimed or who was not physically present in New Mexico for at least six months during the taxable year for which the tax rebate could be claimed.

C. For the purposes of this section, the total number of exemptions for which a tax rebate may be claimed or allowed is determined by adding the number of federal exemptions allowable for federal income tax purposes for each individual included in the return who is domiciled in New Mexico plus two additional exemptions for each individual domiciled in New Mexico included in the return who is sixty-five years of age or older plus one additional exemption for each individual domiciled in New Mexico included in the return who, for federal income tax purposes, is blind plus one exemption for each minor child or stepchild of the resident who would be a dependent for federal income tax purposes if the public assistance contributing to the support of the child or stepchild was considered to have been contributed by the resident.

D. Except as provided in Subsection F of this section, the tax rebate provided for in this section may be claimed in the amount shown in the following table:

Modified gross income is:		And the total number of exemptions is:					
Over	But Not Over	1	2	3	4	5	6 or More
$ 0	$ 1,000 $ 195	$ 260	$ 325	$ 390	$ 455	$ 520	
1,000	1,500	220	315	405	505	570	675
1,500	2,500	220	315	405	505	570	705
2,500	7,500	220	315	405	505	570	730
7,500	8,000	205	310	390	495	575	730
8,000	9,000	185	285	375	480	575	700
9,000	10,000	170	250	340	425	510	665
10,000	11,500	145	210	275	360	445	600
11,500	13,000	130	185	235	295	365	480
13,000	14,500	115	170	220	275	315	390
14,500	16,500	105	155	185	235	285	335
16,500	18,000	100	130	165	210	250	300
18,000	19,500	90	115	145	180	220	260
19,500	21,000	80	105	140	165	185	230
21,000	23,000	80	105	140	165	185	230
23,000	24,500	75	100	120	145	170	195
24,500	26,000	65	90	115	140	155	180
26,000	27,500	55	80	105	130	140	170
27,500	29,500	50	75	100	115	130	155
29,500	31,000	40	55	80	100	115	130
31,000	32,500	35	50	65	80	100	105
32,500	34,000	25	40	50	65	80	90
34,000	36,000	15	35	40	55	65	75.

E. If a taxpayer's modified gross income is zero, the taxpayer may claim a credit in the amount shown in the first row of the table appropriate for the taxpayer's number of exemptions as adjusted by the provisions of Subsection F of this section.

F. For the 2022 taxable year and each subsequent taxable year, the amount of rebate shown in the table in Subsection D of this section shall be adjusted to account for inflation. The department shall make the adjustment by multiplying each amount of rebate by a fraction, the numerator of which is the consumer price index ending during the prior taxable year and the denominator of which is the consumer price index ending in tax year 2021. The result of the multiplication shall be rounded down to the nearest one dollar ($1.00), except that if the result would be an amount less than the corresponding amount for the preceding taxable year, then no adjustment shall be made.

G. The tax rebates provided for in this section may be deducted from the taxpayer's New Mexico income tax liability for the taxable year. If the tax rebates exceed the taxpayer's income tax liability, the excess shall be refunded to the taxpayer.

H. For purposes of this section:

(1) "consumer price index" means the consumer price index for all urban consumers published by the United States department of labor for the month ending September 30; and

(2) "dependent" means "dependent" as defined by Section 152 of the Internal Revenue Code of 1986, as that section may be amended or renumbered, but also includes any minor child or stepchild of the resident who would be a dependent for federal income tax purposes if the public assistance contributing to the support of the child or stepchild was considered to have been contributed by the resident.

(Laws 2021, Chapter 116, Section 1)

7-2-14.1. REPEALED JULY 1, 1993

7-2-14.2. REPEALED JUNE 19, 1987

7-2-14.3. TAX REBATE OF PART OF PROPERTY TAX DUE FROM LOW-INCOME TAXPAYER; LOCAL OPTION; REFUND.

A. The tax rebate provided by this section may be claimed for the taxable year for which the return is filed by an individual who:

(1) has his principal place of residence in a county that has adopted an ordinance pursuant to Subsection G of this section;

(2) is not a dependent of another individual;

(3) files a return; and

(4) incurred a property tax liability on his principal place of residence in the taxable year.

B. The tax rebate provided by this section shall be allowed for any individual eligible to claim the refund pursuant to Subsection A of this section and who:

(1) was not an inmate of a public institution for more than six months during the taxable year;

(2) was physically present in New Mexico for at least six months during the taxable year for which the rebate is claimed; and

(3) is eligible for the rebate as a low-income property taxpayer in accordance with the provisions of Subsection D of this section.

C. A husband and wife who file separate returns for the taxable year in which they could have filed a joint return may each claim only one-half of the tax rebate that would have been allowed on the joint return.

D. As used in the table in this subsection, "property tax liability" means the amount of property tax resulting from the imposition of the county and municipal property tax operating impositions on the net taxable value of the taxpayer's principal place of residence calculated for the year for which the rebate is claimed. The tax rebate provided in this section is as specified in the following table:

LOW-INCOME TAXPAYER'S PROPERTY TAX REBATE TABLE

Taxpayer's Modified Gross Income		Property Tax Rebate
	But Not	
Over	Over	
$ 0	$ 8,000	75% of property tax liability
8,000	10,000	70% of property tax liability
10,000	12,000	65% of property tax liability
12,000	14,000	60% of property tax liability
14,000	16,000	55% of property tax liability
16,000	18,000	50% of property tax liability
18,000	20,000	45% of property tax liability
20,000	22,000	40% of property tax liability
22,000	24,000	35% of property tax liability.

E. If a taxpayer's modified gross income is zero, the taxpayer may claim a tax rebate in the amount shown in the first row of the table. The tax rebate provided for in this section shall not exceed three hundred fifty dollars ($350) per return and, if a return is filed separately that could have been filed jointly, the tax rebate shall not exceed one hundred seventy-five dollars ($175). No tax rebate shall be allowed any taxpayer whose modified gross income exceeds twenty-four thousand dollars ($24,000).

F. The tax rebate provided for in this section may be deducted from the taxpayer's New Mexico income tax liability for the taxable year. If the tax rebate exceeds the taxpayer's income tax liability, the excess shall be refunded to the taxpayer.

G. In January of every odd-numbered year in which a county does not have in effect an ordinance adopted pursuant to this subsection, the board of county commissioners of the county shall conduct a public hearing on the question of whether the property tax rebate provided in this section benefiting low-income property taxpayers in the county should be made available through adoption of a county ordinance. Notice of the public hearing shall be published once at least two weeks prior to the hearing date in at least one newspaper of general circulation in the county and broadcast at some time within the week before the hearing on at least one radio station with substantial broadcasting coverage in the county. At the public hearing, the board shall take action on the question and if a majority of the members elected votes to adopt an ordinance, it shall be adopted no later than thirty days after the public hearing.

H. An ordinance adopted pursuant to Subsection G of this section shall specify the taxable years to which it is applicable. The board of county commissioners adopting an ordinance shall notify the department of the adoption of the ordinance and furnish a copy of the ordinance to the department no later than September 1 of the first taxable year to which the ordinance applies.

I. No later than December 31 of the year immediately following the first year in which the low-income taxpayer property tax rebate provided in the Income Tax Act is in effect for a county, and no later than December 31 of each year thereafter in which the tax rebate is in effect, the department shall certify to the county the amount of the loss of income tax revenue to the state for the previous taxable year attributable to the allowance of property tax rebates to taxpayers of that county. The county shall promptly pay the amount certified to the department. If a county fails to pay the amount certified within thirty days of the date of certification, the department may enforce collection of the amount by action against the county and may withhold from any revenue distribution to the county, not dedicated or pledged, amounts up to the amount certified.

J. As used in this section, "principal place of residence" means the dwelling owned and occupied by the taxpayer and so much of the land surrounding it, not to exceed five acres, as is reasonably necessary for use of the dwelling as a home and may consist of a part of a multidwelling or a multipurpose building and a part of the land upon which it is built.

(Laws 2003, Chapter 275, Section 4)

7-2-14.4. AUTHORIZATION TO FUND PROPERTY TAX REBATE FOR LOW-INCOME TAXPAYERS; TAX IMPOSITION; ELECTION.

A. The board of county commissioners of any county may adopt a resolution to submit to the qualified electors of the county the question of whether a property tax at a rate not to exceed one dollar ($1.00) per thousand dollars ($1,000) of taxable value of property should be imposed for the purpose of providing the necessary funding for the property tax rebate for low-income taxpayers provided in the Income Tax Act if the county has adopted an ordinance providing the property tax rebate.

B. The resolution shall:

(1) specify the rate of the proposed tax, which shall not exceed one dollar ($1.00) per thousand dollars ($1,000) of taxable value of property;

(2) specify the date an election will be held to submit the question of imposition of the tax to the qualified electors of the county;

(3) impose the tax for one, two, three, four or five property tax years and limit the imposition of the proposed tax to no more than five property tax years; and

(4) pledge the revenue from the tax solely for the payment of the income tax revenue reduction resulting from the implementation of the property tax rebate for low-income taxpayers.

C. The resolution authorized in Subsection A of this section shall be adopted no later than May 15 in the year prior to the year in which the tax is proposed to be imposed. By adoption of an appropriate resolution, the board of county commissioners may submit the question of imposing the tax for successive periods of one, two, three, four or five years to the qualified electors of the county. The procedures for the election and for the imposition of the tax for subsequent periods shall be the same as those applying to the initial imposition of the tax. The election shall be scheduled so that the imposition of the tax for successive periods results in continuity of the tax.

D. An election on the question of imposing the tax authorized pursuant to this section may be held in conjunction with a general election or may be conducted as or held in conjunction with a special election, but the election shall be held by the date necessary to assure that the results of the election on the question of imposing the tax may be certified no later than July 1 of the first property tax year in which the tax is proposed to be imposed. Conduct of the election shall be as provided by the Election Code.

E. As used in this section, "taxable value of property" means the combined total of net taxable value of property allocated to the county under the Property Tax Code; the assessed value of products severed and sold in the county for the calendar year preceding the year for which a determination is made as determined under the Oil and Gas Ad Valorem Production Tax Act; the assessed value of equipment in the county as determined under the Oil and Gas Production Equipment Ad Valorem Tax Act; and the taxable value of copper mineral property in the county pursuant to Section 7-39-7 NMSA 1978.

(Laws 2000, Chapter 33, Section 1)

7-2-14.5. IMPOSITION OF TAX; LIMITATIONS.

A. If, as a result of an election held on the question of imposing a property tax to fund the property tax rebate for low-income taxpayers provided in the Income Tax Act, a majority of the qualified electors voting on the question votes in favor of the imposition of the tax, the tax rate shall be certified by the department of finance and administration for any year in which the tax is imposed. The rate certified shall be the rate specified in the authorizing resolution or any lower rate required by operation of the rate limitation provisions of Section 7-37-7.1 NMSA 1978. The tax shall be imposed at the rate certified unless the board of county commissioners determines that the tax imposition be decreased or not made pursuant to Subsection B of this section. The revenue produced by the tax shall be placed in a separate fund in the county treasury and is pledged solely for the payment of the income tax revenue reduction resulting from the implementation of the property tax rebate for low-income taxpayers.

B. A tax imposed pursuant to Subsection A of this section shall be imposed for one, two, three, four or five years commencing with the property tax year in which the tax rate is first imposed. The board of county commissioners may direct that the rate of imposition of the tax be decreased for any year if, in its judgment, imposition of the total rate is not necessary for such year. The board of county commissioners shall direct that the imposition not be made for any property tax year for which the property tax rebate for low-income taxpayers is not provided or for any year in which the county has imposed a property transfer tax pursuant to the Transfer Tax Act.

(Laws 1994, Chapter 111, Section 3)

7-2-15. REPEALED JUNE 19, 1987

7-2-16, 7-2-16.1, AND 7-2.17. REPEALED MAY 19, 1990

7-2-17.1. REPEALED JANUARY 1, 1991

7-2-18. TAX REBATE OF PROPERTY TAX DUE THAT EXCEEDS THE ELDERLY TAXPAYER'S MAXIMUM PROPERTY TAX LIABILITY; REFUND.

A. Any resident who has attained the age of sixty-five and files an individual New Mexico income tax return and is not a dependent of another individual may claim a tax rebate for the taxable year for which the return is filed. The tax rebate shall be the amount of property tax due on the resident's principal place of residence for the taxable year that exceeds the property tax liability indicated by the table in Subsection F or G, as appropriate, of this section, based upon the taxpayer's modified gross income.

B. Any resident otherwise qualified under this section who rents a principal place of residence from another person may calculate the amount of property tax due by multiplying the gross rent for the taxable year by six percent. The tax rebate shall be the amount of property tax due on the taxpayer's principal place of residence for the taxable year that exceeds the property tax liability indicated by the table in Subsection F or G, as appropriate, of this section, based upon the taxpayer's modified gross income.

C. As used in this section, "principal place of residence" means the resident's dwelling, whether owned or rented, and so much of the land surrounding it, not to exceed five acres, as is reasonably necessary for use of the dwelling as a home and may consist of a part of a multidwelling or a multipurpose building and a part of the land upon which it is built.

D. No claim for the tax rebate provided in this section shall be allowed a resident who was an inmate of a public institution for more than six months during the taxable year or who was not physically present in New Mexico for at least six months during the taxable year for which the tax rebate could be claimed.

E. A husband and wife who file separate returns for a taxable year in which they could have filed a joint return may each claim only one-half of the tax rebate that would have been allowed on a joint return.

F. For taxpayers whose principal place of residence is in a county that does not have in effect for the taxable year a resolution in accordance with Subsection J of this section, the tax rebate provided for in this section may be claimed in the amount of the property tax due each taxable year that exceeds the amount shown as property tax liability in the following table:

ELDERLY HOMEOWNERS' MAXIMUM PROPERTY TAX LIABILITY TABLE

Taxpayer's Modified Gross Income		Property Tax Liability
	But Not	
Over	Over	
$ 0	$ 1,000	$ 20
1,000	2,000	25
2,000	3,000	30
3,000	4,000	35
4,000	5,000	40
5,000	6,000	45
6,000	7,000	50
7,000	8,000	55
8,000	9,000	60
9,000	10,000	75
10,000	11,000	90
11,000	12,000	105
12,000	13,000	120
13,000	14,000	135
14,000	15,000	150
15,000	16,000	180.

G. For taxpayers whose principal place of residence is in a county that has in effect for the taxable year a resolution in accordance with Subsection J of this section, the tax rebate provided for in this section may be claimed in the amount of the property tax due each taxable year that exceeds the amount shown as property tax liability in the following table:

ELDERLY HOMEOWNERS' MAXIMUM PROPERTY TAX LIABILITY TABLE

Taxpayer's Modified Gross Income		Property Tax Liability
	But Not	
Over	Over	
$ 0	$ 1,000	$ 20
1,000	2,000	25
2,000	3,000	30
3,000	4,000	35
4,000	5,000	40
5,000	6,000	45
6,000	7,000	50
7,000	8,000	55
8,000	9,000	60
9,000	10,000	75
10,000	11,000	90
11,000	12,000	105
12,000	13,000	120
13,000	14,000	135

14,000	15,000	150
15,000	16,000	165
16,000	17,000	180
17,000	18,000	195
18,000	19,000	210
19,000	20,000	225
20,000	21,000	240
21,000	22,000	255
22,000	23,000	270
23,000	24,000	285
24,000	25,000	300.

H. If a taxpayer's modified gross income is zero, the taxpayer may claim a tax rebate based upon the amount shown in the first row of the appropriate table. The tax rebate provided for in this section shall not exceed two hundred fifty dollars ($250) per return, and, if a return is filed separately that could have been filed jointly, the tax rebate shall not exceed one hundred twenty-five dollars ($125). No tax rebate shall be allowed any taxpayer whose modified gross income exceeds sixteen thousand dollars ($16,000) for taxpayers whose principal place of residence is in a county that does not have in effect for the taxable year a resolution in accordance with Subsection J of this section and twenty-five thousand dollars ($25,000) for all other taxpayers.

I. The tax rebate provided for in this section may be deducted from the taxpayer's New Mexico income tax liability for the taxable year. If the tax rebate exceeds the taxpayer's income tax liability, the excess shall be refunded to the taxpayer.

J. The board of county commissioners may adopt a resolution authorizing otherwise qualified taxpayers whose principal place of residence is in the county to claim the rebate provided by this section in the amounts set forth in Subsection G of this section. The resolution must also provide that the county will reimburse the state for the additional amount of tax rebates paid to such taxpayers over the amount that would have been paid to such taxpayers under Subsection F of this section. The resolution may apply to one or more taxable years and shall specify the period of time for which the rebate provided by this section may be claimed by qualified taxpayers. The county must adopt the resolution and notify the department of the adoption by no later than September 1 of the taxable year to which the resolution first applies. The department shall determine the additional amounts paid to taxpayers of the county for each taxable year and shall bill the county for the amount at the time and in the manner determined by the department. If the county fails to pay any bill within thirty days, the department may deduct the amount due from any amount to be transferred or distributed to the county by the state, other than debt interceptions.

(Laws 2003, Chapter 275, Section 5)

3.3.13.8 TAX REBATE OF PROPERTY TAX DUE WHICH EXCEEDS THE ELDERLY TAXPAYER'S MAXIMUM PROPERTY TAX LIABILITY; REFUND

A. Rental component of nursing home charges.

(1) Any resident 65 or older meeting the requirements for the tax rebate who resides in a long-term residential care facility (nursing home) which is subject to taxation under the Property Tax Code and which does not itemize an amount for rent in its billings to the resident may compute the allowable amount of property tax rebate in accordance with this subsection (3.3.13.8A NMAC).

(2) 32% of the amount billed to, or for the benefit of, the resident by the long term residential care facility for the taxpayer's taxable year shall be the computed amount of gross rent for the purposes of the property tax rebate.

(3) For the purposes of this subsection (3.3.13.8A NMAC), the term

"long-term residential care facility" means any facility which provides room, board and health care services to persons residing in the facility for more than a temporary period of time. "Long-term residential care facility" does not include any general or other hospital unless the hospital maintains a separate area for purposes of providing long-term room, board and health care services for persons not requiring admission to the hospital.

B. Fiscal year filers. Residents who file income tax on a fiscal year basis shall determine the amount of the tax rebate by:

(1) determining the weight of each calendar year by dividing the number of days in each calendar year included in the taxpayer's income tax fiscal year by the number of days in the taxpayer's income tax fiscal year;

(2) multiplying the property tax paid in each calendar year by the weight determined for that year; and

(3) combining the results for the 2 calendar years.

[12/23/93, 1/15/97; 3.3.13.8 NMAC - Rn & A, 3 NMAC 3.13.8, 12/14/00]

7-2-18.1. CREDIT FOR EXPENSES FOR DEPENDENT CHILD DAY CARE NECESSARY TO ENABLE GAINFUL EMPLOYMENT TO PREVENT INDIGENCY.

A. As used in this section:

(1) "caregiver" means a corporation or an individual eighteen years of age or over who receives compensation from a resident for providing direct care, supervision and guidance to a qualifying dependent of the resident for less than twenty-four hours daily and includes related individuals of the resident but does not include a dependent of the resident;

(2) "cost of maintaining a household" means the expenses incurred for the mutual benefit of the occupants thereof by reason of its operation as the principal place of abode of such occupants, including property taxes, mortgage interest, rent, utility charges, upkeep and repairs, property insurance and food consumed on the premises. "Cost of maintaining a household" shall not include expenses otherwise incurred, including cost of clothing, education, medical treatment, vacations, life insurance, transportation and mortgages;

(3) "dependent" means "dependent" as defined by Section 152 of the Internal Revenue Code, as that section may be amended or renumbered, but also includes any minor child or stepchild of the resident who would be a dependent for federal income tax purposes if the public assistance contributing to the support of the child or stepchild was considered to have been contributed by the resident;

(4) "disabled person" means a person who has a medically determinable physical or mental impairment, as certified by a licensed physician or an advanced practice registered nurse, certified nurse-midwife or physician assistant working within that person's scope of practice, that renders such person unable to engage in gainful employment;

(5) "gainfully employed" means working for remuneration for others, either full time or part time, or self-employment in a business or partnership; and

(6) "qualifying dependent" means a dependent under the age of fifteen at the end of the taxable year who receives the services of a caregiver.

B. Any resident who files an individual New Mexico income tax return and who is not a dependent of another taxpayer may claim a credit for child day care expenses incurred and paid to a caregiver in New Mexico during the taxable year by such resident if the resident:

(1) singly or together with a spouse furnishes over half the cost of maintaining the household for one or more qualifying dependents for any period in the taxable year for which the credit is claimed;

(2) is gainfully employed for any period for which the credit is claimed or, if a joint return is filed, both spouses are gainfully employed or one is disabled for any period for

which the credit is claimed;

(3) compensates a caregiver for child day care for a qualifying dependent to enable such resident together with the resident's spouse, if any and if not disabled, to be gainfully employed;

(4) is not a recipient of public assistance under a program of aid to families with dependent children, a program under the New Mexico Works Act or any successor program during any period for which the credit provided by this section is claimed; and

(5) has a modified gross income, including child support payments, if any, of not more than the annual income that would be derived from earnings at double the federal minimum wage.

C. The credit provided for in this section shall be forty percent of the actual compensation paid to a caregiver by the resident for a qualifying dependent not to exceed four hundred eighty dollars ($480) for each qualifying dependent or a total of one thousand two hundred dollars ($1,200) for all qualifying dependents for a taxable year. For the purposes of computing the credit, actual compensation shall not exceed eight dollars ($8.00) per day for each qualifying dependent.

D. The caregiver shall furnish the resident with a signed statement of compensation paid by the resident to the caregiver for day care services. Such statements shall specify the dates and the total number of days for which payment has been made.

E. If the resident taxpayer has a federal tax liability, the taxpayer shall claim from the state not more than the difference between the amount of the state child care credit for which the taxpayer is eligible and the federal credit for child and dependent care expenses the taxpayer is able to deduct from federal tax liability for the same taxable year; provided, for first year residents only, the amount of the federal credit for child and dependent care expenses may be reduced to an amount equal to the amount of federal credit for child and dependent care expenses the resident is able to deduct from federal tax liability multiplied by the ratio of the number of days of residence in New Mexico during the resident's taxable year to the total number of days in the resident's taxable year.

F. The credit provided for in this section may be deducted from the taxpayer's New Mexico income tax liability for the taxable year. If the credit exceeds the taxpayer's income tax liability, the excess shall be refunded to the taxpayer.

G. A husband and wife maintaining a household for one or more qualifying dependents and filing separate returns for a taxable year for which they could have filed a joint return:

(1) may each claim only one-half of the credit that would have been claimed on a joint return; and

(2) are eligible for the credit provided in this section only if their joint modified gross income, including child support payments, if any, is not more than the annual income that would be derived from earnings at double the federal minimum wage.

(Laws 2015, Chapter 116, Section 1)

3.3.13.9 CREDIT FOR EXPENSES FOR DEPENDENT CHILD DAY CARE NECESSARY TO ENABLE GAINFUL EMPLOYMENT TO PREVENT INDIGENCY

A. Definition of "dependent" for purposes of the child care credit. "Dependent" for purposes of Section 7-2-18.1 NMSA 1978 is a "dependent" as defined in Section 152 of the Internal Revenue Code, as amended or renumbered, and includes a child of divorced or legally separated parents when the taxpayer meets all the requirements of Section 44A(f)(5) and Section 152(E) of the Internal Revenue Code, as amended or renumbered.

B. "Gainfully employed" defined. As used in Section 7-2-18.1 NMSA 1978, a resident who is "gainfully employed" includes any resident who is working for wages, salary, commissions or any other form of employee remuneration or any resident who engages in any business activity as a proprietor or partner and who is required to report and pay taxes under the provisions of the federal Self-Employment Contributions Act.

C. Period of gainful employment.

(1) The credit for expenses for dependent child day care may only be claimed for expenses which occur during periods in which the taxpayer is gainfully employed. A taxpayer may not include child care expenses incurred during periods in which the taxpayer is not gainfully employed.

(2) Example: X, a single parent who provides over 50% of the support of a ten year old dependent child, attended school and was not employed during the months of January through May of the taxable year. On June 1, X began a career and was employed for the remainder of the year. X incurred child care expenses during the whole year. X can claim the credit for child care computed on only those expenses which were incurred during those months in which X was gainfully employed, June through December. X may not include the expenses for child care during the months of January through May in computing the amount of the credit.

[11/10/83, 10/24/89, 12/29/89, 3/16/92, 1/15/97; 3.3.13.9 NMAC - Rn & A, 3 NMAC 3.13.9, 12/14/00]

7-2-18.2. CREDIT FOR PRESERVATION OF CULTURAL PROPERTY; REFUND.

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 who files an individual New Mexico income tax return and who is not a dependent of another individual and who is the owner of a cultural property listed on the official New Mexico register of cultural properties, with the taxpayer's consent, may claim a credit not to exceed a maximum aggregate of twenty-five thousand dollars ($25,000) in an amount equal to one-half of the cost of restoration, rehabilitation or preservation of a cultural property listed on the official New Mexico register; 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 certified 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) the taxpayer 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) the taxpayer 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 restoration, rehabilitation or preservation is carried out. Except as provided in Subsection F 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 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 certified by the committee.

D. A husband and wife who file separate returns for a taxable year in which they could have filed a joint return may each claim only one-half of the credit that would have been allowed on a joint return.

E. 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) in the aggregate if governed by Paragraph (1) of Subsection A of this section, or fifty thousand dollars ($50,000) in the aggregate 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 certified by the committee.

F. The credit provided in this section may only be deducted from the taxpayer's 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, preservation or rehabilitation project for any cultural property listed on the official New Mexico register.

G. The historic preservation division shall promulgate regulations for the implementation of Subsection B of this section.

H. 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 14)

3.3.13.10 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 personal income tax due for amounts expended for the restoration, rehabilitation and preservation of cultural property owned by the taxpayer and listed on the official New Mexico register of cultural properties as those terms are defined in 1 of the cultural properties review committee Rule 84-1. Any taxpayer who files a New Mexico personal income tax return and who is not a dependent of another individual may claim a credit 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 personal income tax return for the year or years in which the restoration, rehabilitation or preservation is carried out.

C. S-corporation claim for cultural property credit.

(1) A shareholder in a small business corporation may claim the shareholder's pro rata share of the cultural property credit against New Mexico personal income tax due. The total aggregate credit for all shareholders and other owners of a property shall not

exceed an amount equal to one-half the cost of 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 shareholder shall claim the cultural property credit in the same manner as specified in 3.3.13.10B NMAC and shall, in addition, provide a schedule listing the names, addresses and social security numbers of all shareholders in the corporation and any other owners of the property, the pro rata share of the credit of each shareholder and other owner(s) and the New Mexico tax identification number under which the New Mexico income and franchise tax return for "S" Corporations (CIT-2) is filed.

D. Partnership claim for cultural property credit.

(1) A partner in a partnership or joint venture may claim the partner's pro rata share of the cultural property credit against New Mexico personal income tax due. The total aggregate credit for all partners shall not exceed an amount equal to one-half the cost of 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 partner shall claim the cultural property credit in the same manner as specified in 3.3.13.10B 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.

[5/17/85, 12/29/89, 3/16/92, 1/15/97; 3.3.13.10 NMAC - Rn & A, 3 NMAC 3.13.10, 12/14/00]

7-2-18.3. REPEALED JANUARY 1, 1998

7-2-18.4. AND 7-2-18.5. REPEALED JULY 1, 2023

7-2-18.6. REPEALED JANUARY 1, 2002

7-2-18.7. REPEALED JULY 1, 2025

7-2-18.8. REPEALED JULY 1, 2023

7-2-18.9. REPEALED JANUARY 1, 2006

7-2-18.10. TAX CREDIT; CERTAIN CONVEYANCES OF REAL PROPERTY.

A. There shall be allowed as a credit against the tax liability imposed by the Income 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 individual 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 and 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 75-9-2 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 1)

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 identified in the deed of conservation easement that contains existing structures and activities or will contain future structures and activities 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, Sections 75-5-1 et seq. NMSA 1978.

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" is defined in Subsection B of Section 75-9-3 NMSA 1978.

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 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 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" is defined in Subsection C of Section 75-9-3 NMSA 1978.

P. "Qualified appraisal" means a qualified appraisal as defined in 26 C.F.R. section 1.170A-17(a) 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 value of enhancement, whether or not the other property is contiguous with the donated property. The conservation contribution shall be reduced by the amount of the increase in value to the other property.

Q. "Qualified appraiser" means a qualified appraiser as defined in 26 C.F.R. section 1.170A-17(b) 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 Section 61-28B-3 NMSA 1978 or who is not identified in the Section 61-29-2 NMSA 1978, 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 Section 61-28B-3 NMSA 1978 or who is identified in Section 61-29-2 NMSA 1978.

S. "Taxpayer" is defined in Paragraph (2) of Subsection K of Section 7-2-18.10 NMSA 1978 and Paragraph (2) of Subsection K of Section 7-2A-8.9 NMSA 1978. 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 income 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 the secretary’s designee.
[3.13.20.7 NMAC - Rp, 3.13.20.7 NMAC, 6/16/2008; A, 12/30/2010; A, 2/12/2016; A, 1/30/2024]

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 the applicant conveys, the total amount of the land conservation incentives tax credit for the donation for which an applicant applies shall not exceed fifty percent of the fair market value of the land or interest in land the applicant donated in perpetuity, regardless of the value of the land or interest in land donated or the number of taxpayers owning 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 owning 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 fifty 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 owning 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 fifty percent of the donated land or interest in land's fair market value. No matter the number of taxpayers owning the donated land or interest in land, the total land conservation incentives tax credit all taxpayers receive for the donated land or interest in land cannot exceed fifty 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 owning an equal interest in donated land or interest in land 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, married individuals 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 the spouse’s proportionate share, as determined by the spouse’s ownership interest in the donated land or interest in land, of fifty percent of the donated land's or interest in land's fair market value. For donations made on or after January 1, 2008, married individuals 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 the spouse's proportionate share, as determined by the spouse's ownership interest in the donated land or interest in land, of fifty 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 the deed is recorded with the county clerk where the land or interest in land is located. Pursuant to Section 7-1-26 NMSA 1978, an applicant who files a tax return may amend the 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 Section 7-1-26 NMSA 1978. 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 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 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 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; A, 1/30/2024]

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 one electronic copy, to the energy, minerals and natural resources department. For the electronic copy the applicant shall submit a PDF of the assessment application package on a USB flash drive or by other method the energy, minerals and natural resources department approves. Any photographs submitted shall be in color.

D. The assessment application package shall consist of an assessment application form containing 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, to ensure the conservation or preservation purpose is protected in perpetuity, a description of who holds or will hold a conservation easement the applicant has placed or will place on the land and assurance the conservation easement will contain a provision that the conservation restrictions run with the land in perpetuity and any reserved use shall be consistent with the conservation or preservation purpose and 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 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 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 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 meeting 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 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 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 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 Section 7-36-20 NMSA 1978 (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 allowing 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 the agency holds in New Mexico;

(b) the number of acres of each fee land held for conservation or preservation purposes or conservation easement 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 the resources or areas contained in the donation or proposed donation are significant or important.

F. If the secretary finds the donation as conveyed or proposed is for a conservation or preservation purpose and will protect the conservation or preservation purpose in perpetuity and the resources or areas contained in the donation or proposed donation are significant or important, the secretary shall notify the applicant by letter 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. 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 or a letter describing the specific changes made 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 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 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, 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 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 addressing the requirement the resources or areas contained in the donation or proposed donation be significant or important or 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; A, 1/30/2024]

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 the donation or proposed donation is for a conservation or preservation purpose and will protect that conservation or preservation purpose in perpetuity and 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 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; or, if the applicant has made changes, the applicant shall describe the changes and provide a redline copy showing the changes or provide a letter describing the specific changes made. If the applicant has not made changes or the changes consist solely of increasing the acreage of the donation or decreasing the size of or removing a building envelope, the secretary shall review the application for certification of eligibility. If the applicant has made changes other than increasing the acreage of the donation or decreasing the size of or removing a building envelope the applicant shall submit a new assessment pursuant to 3.13.20.9 NMAC application or a letter describing the specific changes made 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 one paper copy and one electronic copy of the application package, to the energy, minerals and natural resources department. For the electronic copy the applicant shall submit a PDF of the certification application package on a USB flash drive or by other method the energy, minerals and natural resources department approves. Any photographs shall be provided in color. The applicant shall certify 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 business tax identification number (BTIN) 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 BTIN. 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 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 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 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 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 after reviewing the applicant's assessment application the donation or proposed donation is for a conservation or preservation purpose and will protect the conservation or preservation purpose in perpetuity and the resources or areas contained in the donation or proposed donation are significant or important;

(2) written certification signed by the applicant since the applicant submitted the assessment application and received approval of the assessment application or pursuant to Subsection F of 3.13.20.9 NMAC changes to the assessment application the applicant has not changed the

(a) donation or proposed donation or donation assessment report, or if the applicant has made changes, the changes consist solely of increasing the acreage of the donation or decreasing the size of or removing a building envelope, or

(b) public or private conservation agency to which the applicant conveyed or planned to convey the donation;

(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 a qualified appraiser prepared showing the fair market value of the land or interest in land with a statement from the appraiser who prepared the appraisal certifying the appraisal is a qualified appraisal and 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 be a fully documented appraisal report commensurate with the complexity of the assignment;

(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 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 authorizing personnel from the appraisal bureau to contact the appraiser that prepared the appraisal for the donation;

(9) a title opinion certifying 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 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 finding 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 prohibiting any extraction or removal of minerals by any surface mining method; methods of mining that have limited, localized negative effects on the land and are not irremediably destructive of significant conservation interests may be allowed if the secretary finds the methods will have limited, localized negative effects and are not irremediably 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 finding the probability of surface mining occurring on such property is so remote as to be negligible; the secretary may have a geologist 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 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 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 complying with 26 U.S.C. section 170(h) and its implementing regulations placed on the land containing a provision the conservation restrictions run with the land in perpetuity and 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 the 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 identifying the donation's conservation or preservation purpose or purposes;

(3) a provision in the conservation easement providing 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 providing 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 describing 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 identifying the significant public benefit;

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

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

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

(11) a provision in the conservation easement prohibiting 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, requiring the conservation or preservation purposes for which the donation was originally intended continue to be carried out;

(12) a provision in the conservation easement providing the donation of the less-than-fee interest is a property right, immediately vested in the donee, and providing the less-than-fee interest has a fair market value at least equal to the proportionate value the conservation restriction at the time of the donation bears to the property as a whole at that time; the provision shall further provide 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 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 subordinating 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; A, 2/12/2016; A, 1/30/2024]

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 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 the appraisal does not meet the requirements of 3.13.20 NMAC, the uniform standards of professional appraisal practice or 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) since the applicant submitted and received approval of the assessment application or pursuant to Subsection F of 3.13.20.9 NMAC changes to the assessment application, the applicant changed the

(a) donation or proposed donation or donation assessment report, and the changes consist of more than increasing the acreage of the donation or decreasing the size of or removing a building envelope, or

(b) public or private conservation agency to which the applicant conveyed or planned to convey the donation;

(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 addressing 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) The applicant shall submit a new assessment application pursuant to 3.13.20.8 NMAC, if the secretary rejects the certification of eligibility application because the applicant changed the

(a) donation or proposed donation or donation assessment report, and the changes consist of more than increasing the acreage of the donation or decreasing the size of or removing a building envelope, or

(b) the public or private conservation agency to which the applicant conveyed or planned to convey the donation since the applicant submitted the assessment application

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 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 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; Sections 7-2-18.10 or 7-2A-8.9 NMSA 1978; 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; A, 1/30/2024]

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 there is cause to reject the certification of eligibility application, the secretary shall issue a letter advising the applicant the secretary is proposing to reject the certification of eligibility application and stating the specific reasons for the proposed rejection. If the proposed rejection involves an unfavorable preliminary review of the appraisal from the appraisal bureau, the energy, minerals and natural resources department shall include a copy of the unfavorable preliminary review of the appraisal with the secretary's letter.

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 submit a revised appraisal, information or other documentation demonstrating 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 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 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; A, 2/12/2016; A, 1/30/2024]

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] holding 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.

Ranking	Site Condition	Development	Uses	Surroundings	Stewardship or Monitoring
Favorable	Site is of uniformly good condition and	Additional development of the property is	Allowed uses of the property are consistent	Surrounding land uses are entirely compatible	If a fee donation, the recipient has sufficient resources as well as a formal plan

	sufficient size to maintain the conservation or preservation purposes, assuming other favorable factors such as good potential for restoration if needed	specifically prohibited or additional development that is allowed is consistent with the conservation or preservation purposes	with the conservation or preservation purposes	with site conservation or preservation purposes, or site serves as a connection between other conservation lands or provides significant or important open space	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 of conservation or preservation values is severely compromised by the site's size,	Additional development allowed that is inconsistent with the conservation or preservation purposes	Allowed uses are clearly incompatible with the long-term maintenance of the conservation or preservation	Surrounding land uses are clearly incompatible with site conservation or preservation and threaten site integrity	If a fee donation, 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

	configuration, location or condition		purposes	and the site does not serve as a connection between other conservation lands or provide significant or important open space	and ensure the grantor's compliance with the conservation's easement's terms.

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; A, 1/30/2024]

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 Section 7-2-18.10 or Section 7-2A-8.9 NMSA 1978 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 the tax filer’s 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, 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; A, 1/30/2024]

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 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 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. 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; A, 1/30/2024]

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]

7-2-18.11. REPEALED JULY 1, 2025

7-2-18.12. REPEALED JUNE 17, 2005

7-2-18.13. CREDIT; UNREIMBURSED OR UNCOMPENSATED MEDICAL CARE EXPENSES OF INDIVIDUALS SIXTY-FIVE YEARS OF AGE OR OLDER.

A. A taxpayer who files an individual New Mexico income tax return, who is sixty-five years of age or older and who is not a dependent of another taxpayer may claim a credit in an amount equal to two thousand eight hundred dollars ($2,800) for medical care expenses paid by the taxpayer for that taxpayer or for the taxpayer's spouse or dependent if those expenses equal twenty-eight thousand dollars ($28,000) or more within a taxable year and if those expenses are not reimbursed or compensated for by insurance or otherwise.

B. A husband and wife who file separate returns for a taxable year in which they could have filed a joint return may each claim only one-half of the credit that would have been allowed on a joint return.

C. The credit provided in this section may be deducted from the taxpayer's income tax liability. If the credit exceeds the income tax liability for the taxable year, the excess shall be refunded to the taxpayer.

D. As used in this section:

(1) "dependent" means "dependent" as defined in Section 152 of the Internal Revenue Code;

(2) "health care facility" means a hospital, outpatient facility, diagnostic and treatment center, rehabilitation center, freestanding hospice or other similar facility at which medical care is provided;

(3) "medical care" means the diagnosis, cure, mitigation, treatment or prevention of disease or for the purpose of affecting any structure or function of the body;

(4) "medical care expenses" means the amounts paid for:

(a) the diagnosis, cure, mitigation, treatment or prevention of disease or for the purpose of affecting any structure or function of the body, if provided by a physician or in a health care facility;

(b) prescribed drugs or insulin;

(c) qualified long-term care services as defined in Section 7702B(c) of the Internal Revenue Code;

(d) insurance covering medical care, including amounts paid as premiums under Part B of Title 18 of the Social Security Act or for a qualified long-term care insurance contract defined in Section 7702B(b) of the Internal Revenue Code, if the insurance or other amount is paid from income included in the taxpayer's adjusted gross income for the taxable year;

(e) specialized treatment or the use of special therapeutic devices if the treatment or device is prescribed by a physician and the patient can show that the expense was incurred primarily for the prevention or alleviation of a physical or mental defect or illness; and

(f) care in an institution other than a hospital, such as a sanitarium or rest home, if the principal reason for the presence of the person in the institution is to receive the medical care available; provided that if the meals and lodging are furnished as a necessary part of such care, the cost of meals and lodging are "medical care expenses";

(5) "physician" means a medical doctor, osteopathic physician, dentist, podiatrist, chiropractic physician or psychologist licensed or certified to practice in New Mexico; and

(6) "prescribed drug" means a drug or biological that requires a prescription of a physician for its use by an individual.

(Laws 2005, Chapter 267, Section 1)

7-2-18.14. REPEALED JULY 1, 2025

7-2-18.15. WORKING FAMILIES TAX CREDIT.

A. A taxpayer who is a resident and who files an individual New Mexico income tax return may claim a credit in an amount equal to twenty percent for taxable years beginning on or after January 1, 2021, and twenty-five percent for taxable years beginning on or after January 1, 2023, of the federal earned income tax credit for which that taxpayer is eligible for the same taxable year or would have been eligible but for the identification number requirement pursuant to 26 U.S.C. 32(m), as that section may be amended or renumbered.

B. A taxpayer who is a resident and who files an individual New Mexico tax return may claim a credit in an amount equal to twenty percent for taxable years beginning on or after January 1, 2021, and twenty-five percent for taxable years beginning on or after January 1, 2023, of the federal earned income tax credit for which that taxpayer would have been eligible for the same taxable year but for the age requirement pursuant to 26 U.S.C. 32(c)(1)(A)(ii)(II), as that section may be amended or renumbered; provided that the taxpayer is at least eighteen years of age but has not reached the age of twenty-five.

C. The credit provided in this section may be referred to as the "working families tax credit".

D. The working families tax credit may be deducted from the income tax liability of an individual who claims the credit and qualifies for the credit pursuant to this section. If the credit exceeds the individual's income tax liability for the taxable year, the excess shall be refunded to the individual.

E. As used in this section, "federal earned income tax credit" means the tax credit allowed pursuant to 26 U.S.C. 32, as that section may be amended or renumbered.

(Laws 2021, Chapter 116, Section 2)

7-2-18.16. CREDIT; SPECIAL NEEDS ADOPTED CHILD TAX CREDIT; CREATED; QUALIFICATIONS; DURATION OF CREDIT.

A. A taxpayer who files an individual New Mexico income tax return, who is not a dependent of another taxpayer and who adopts or has adopted a special needs child may claim a credit against the taxpayer's tax liability imposed pursuant to the Income Tax Act. The credit authorized pursuant to this section may be referred to as the "special needs adopted child tax credit".

B. A taxpayer may claim and the department may allow a special needs adopted child tax credit in the amount of one thousand five hundred dollars ($1,500) to be claimed against the taxpayer's tax liability for the taxable year imposed pursuant to the Income Tax Act.

C. A taxpayer may claim a special needs adopted child tax credit for each year that the child may be claimed as a dependent for federal taxation purposes by the taxpayer.

D. If the amount of the special needs adopted child tax credit due to the taxpayer exceeds the taxpayer's individual income tax liability, the excess shall be refunded.

E. Married individuals who file separate returns for a taxable year in which they could have filed a joint return may each claim only one-half of the special needs adopted child tax credit provided in this section that would have been allowed on a joint return.

F. A taxpayer allowed a tax credit pursuant to this section shall claim the credit on forms and in a manner required by the department.

G. The tax credit provided by this section shall be included in the tax expenditure budget pursuant to Section 7-1-84 NMSA 1978, including the annual aggregate cost of the tax credit.

H. As used in this section, "special needs adopted child" means an individual who may be over eighteen years of age and who is certified by the children, youth and families department or a licensed child placement agency as meeting the definition of a "difficult to place child" pursuant to the Adoption Act; provided, however, if the classification as a "difficult to place child" is based on a physical or mental impairment or an emotional disturbance the physical or mental impairment or emotional disturbance shall be at least moderately disabling.

(Laws 2025, Chapter 130, Section 38; Applicable to taxable years beginning on or after January 1, 2024)

3.3.4.10 SECTION 7-2-5.4 NMSA 1978: EXEMPTION APPORTIONMENT

A. Any individual who has adopted a special needs child on or after January 1, 1988, who has income both within and without this state and who claims the exemption provided by Section 7-2-5.4 NMSA 1978 shall apportion the exemption amount claimed in accordance with this section (3.3.4.10 NMAC).

B. For taxable years beginning in 1988 or 1989, apportionment shall be accomplished by reducing the deduction for non-New Mexico income by an amount equal to the product of the exemption amount multiplied by the percentage of non-New Mexico income computed on the individual's New Mexico income tax return or any schedules or attachments thereto.

C. Example: A & B are married and file a joint return for 1988 and for 1989. 25% of their income is from outside New Mexico in 1988 but only 20% in 1989. In March, 1988, they adopted a special needs child. In July, 1989, they adopt a second special needs child. For the 1988 tax year, they must reduce the amount of their allocation and apportionment of non-New Mexico income by $625, and for the 1989 tax year $1,000, computed as follows:

Example:

		1988		1989
Statutory maximum per child		$2,500		$2,500
Number of children adopted		x 1	x 2	
		$2,500		$5,000
% of non-New Mexico income for 1988			x .25	
% of non-New Mexico income for 1989			x .20	
Adjustment to non-New Mexico income	$ 625		$1,000	

D. For taxable years beginning on or after January 1, 1990, apportionment is accomplished in the process of determining tax due and the amount of the credit available pursuant to Subsection C of Section 7-2-11 NMSA 1978. Accordingly, no separate process is necessary to apportion the exemption provided by Section 7-2-5.4 NMSA 1978.

E. This version of this section (3.3.4.10 NMAC) is retroactively applicable to taxable years beginning on or after January 1, 1990.

[3/3/89, 12/29/89, 3/16/92, 1/15/97; 3.3.4.10 NMAC - Rn & A, 3 NMAC 3.4.10, 12/14/00]

7-2-18.17. ANGEL INVESTMENT CREDIT.

A. A taxpayer who files a New Mexico income tax return, is not a dependent of another taxpayer, is an accredited investor and makes a qualified investment may apply for, and the department may allow, a claim for a credit in an amount not to exceed twenty-five percent of the qualified investment; provided that a credit for each qualified investment shall not exceed sixty-two thousand five hundred dollars ($62,500). The tax credit provided in this section shall be known as the "angel investment credit".

B. A taxpayer may claim the angel investment credit:

(1) for not more than one qualified investment per investment round;

(2) for qualified investments in no more than five qualified businesses per taxable year; and

(3) for a qualified investment made on or before December 31, 2030.

C. A taxpayer may claim an angel investment credit by submitting a completed application to the department on forms and in a manner required by the department no later than one year following the end of the calendar year in which the qualified investment is made. A taxpayer shall not claim more than one credit for the same qualified investment in the same investment round.

D. Except as provided in Subsection J of this section, a taxpayer shall claim the angel investment credit no later than one year following the date the completed application for the credit is approved by the department.

E. Applications and all subsequent materials submitted to the department related to the application shall also be submitted to the economic development department.

F. The department shall allow a maximum annual aggregate of two million dollars ($2,000,000) in angel investment credits per calendar year. Completed applications shall be considered in the order received. Applications for credits that would have been allowed but for the limit imposed by this subsection shall be allowed in subsequent calendar years.

G. The credit provided by this section shall be included in the tax expenditure budget pursuant to Section 7-1-84 NMSA 1978, which shall include, at a minimum: the number of accredited investors determined to be eligible for the credit in the previous year; the names of those investors; the amount of credit for which each investor was determined to be eligible; and the number and names of the businesses determined to be qualified businesses for purposes of an investment by an accredited investor.

H. A taxpayer who otherwise qualifies for and claims a credit pursuant to this section for a qualified investment made 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.

I. Married individuals who file separate returns for a taxable year in which they could have filed a joint return may each claim one-half of the credit that would have been allowed on a joint return.

J. The angel investment credit may only be deducted from the taxpayer's 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 five consecutive years.

K. As used in this section:

(1) "accredited investor" means a person who is an accredited investor within the meaning of Rule 501 issued by the federal securities and exchange commission pursuant to the federal Securities Act of 1933, as amended;

(2) "business" means a corporation, general partnership, limited partnership, limited liability company or other similar entity, but excludes an entity that is a government or a nonprofit organization designated as such by the federal government or any state;

(3) "equity" means common or preferred stock of a corporation, a partnership interest in a limited partnership or a membership interest in a limited liability company, including debt subject to an option in favor of the creditor to convert the debt into common or preferred stock, a partnership interest or a membership interest;

(4) "investment round" means an offer and sale of securities and all other offers and sales of securities that would be integrated with such offer and sale of securities under Regulation D issued by the federal securities and exchange commission pursuant to the federal Securities Act of 1933, as amended;

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

(a) construction;

(b) farming;

(c) processing natural resources, including hydrocarbons; or

(d) preparing meals for immediate consumption, on- or off-premises;

(6) "qualified business" means a business that:

(a) maintains its principal place of business and employs a majority of its full-time employees, if any, in New Mexico and a majority of its tangible assets, if any, are located in New Mexico;

(b) engages in qualified research or manufacturing activities in New Mexico;

(c) is not primarily engaged in or is not primarily organized as any of the following types of businesses: credit or finance services, including banks, savings and loan associations, credit unions, small loan companies or title loan companies; financial brokering or investment; professional services, including accounting, legal services, engineering and any other service the practice of which requires a license; insurance; real estate; construction or construction contracting; consulting or brokering; mining; wholesale or retail trade; providing utility service, including water, sewerage, electricity, natural gas, propane or butane; publishing, including publishing newspapers or other periodicals; broadcasting; or providing internet operating services;

(d) has not issued securities registered pursuant to Section 6 of the federal Securities Act of 1933, as amended; has not issued securities traded on a national securities exchange; is not subject to reporting requirements of the federal Securities Exchange Act of 1934, as amended; and is not registered pursuant to the federal Investment Company Act of 1940, as amended, at the time of the investment;

(e) has one hundred or fewer employees calculated on a full-time-equivalent basis in the taxable year in which the investment was made; and

(f) has not had gross revenues in excess of five million dollars ($5,000,000) in any fiscal year ending on or before the date of the investment;

(7) "qualified investment" means a cash investment in a qualified business for equity, but does not include an investment by a taxpayer if the taxpayer, a member of the taxpayer's immediate family or an entity affiliated with the taxpayer receives compensation from the qualified business in exchange for services provided to the qualified business within one year of investment in the qualified business; and

(8) "qualified research" means "qualified research" as defined by Section 41 of the Internal Revenue Code.

(Laws 2025, Chapter 130, Section 39)

7-2-18.18. RENEWABLE ENERGY PRODUCTION TAX 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 a tax credit pursuant to Section 7-2A-19 NMSA 1978 has been claimed.

B. A taxpayer who files an individual New Mexico income tax return and who is not a dependent of another taxpayer is eligible for the renewable energy production tax credit if the taxpayer:

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

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 (11) of this subsection; provided that the total amount of tax credits claimed by all taxpayers in a taxable year 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;

(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; and

(11) one and one-half cents ($.015) per kilowatt-hour in the eleventh 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 one hundred twenty consecutive months, 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 an electric generating facility with at least one megawatt generating capacity located in New Mexico that produces electricity using a qualified energy resource and the electricity produced is sold 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 Section 7-2A-19 NMSA 1978 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 for the taxable year to be claimed; and

(5) the energy, minerals and natural resources department certifies the allocation for the taxable year to be claimed 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. Married individuals who file separate returns for a taxable year in which they could have filed a joint return may each claim only one-half of the credit that would have been allowed on a joint return.

K. 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.

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

M. 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 2021, Chapter 65, Section 6)

7-2-18.19. REPEALED JULY 1, 2025

7-2-18.20. REPEALED JANUARY 1, 2013

7-2-18.21. REPEALED JULY 1, 2023

7-2-18.22. RURAL HEALTH CARE PRACTITIONER TAX CREDIT.

A. A taxpayer who files an individual New Mexico tax return, who is not a dependent of another individual, who is an eligible health care practitioner and who has provided health care services in New Mexico in a rural health care underserved area in a taxable year may claim a credit against the tax liability imposed by the Income Tax Act. The credit provided in this section may be referred to as the "rural health care practitioner tax credit".

B. The rural health care practitioner tax credit may be claimed and allowed in an amount that shall not exceed:

(1) five thousand dollars ($5,000) for all physicians, osteopathic physicians, dentists, psychologists, podiatric physicians and optometrists who qualify pursuant to the provisions of this section and have provided health care during a taxable year for at least one thousand five hundred eighty-four hours at a practice site located in an approved rural health care underserved area. Eligible health care practitioners listed in this paragraph who provided health care services for at least seven hundred ninety-two hours but less than one thousand five hundred eighty-four hours at a practice site located in an approved rural health care underserved area during a taxable year are eligible for one-half of the tax credit amount; and

(2) three thousand dollars ($3,000) for all pharmacists, dental hygienists, physician assistants, certified registered nurse anesthetists, certified nurse practitioners, clinical nurse specialists, registered nurses, midwives, licensed clinical social workers, licensed independent social workers, professional mental health counselors, professional clinical mental health counselors, marriage and family therapists, professional art therapists, alcohol and drug abuse counselors and physical therapists who qualify pursuant to the provisions of this section and have provided health care during a taxable year for at least one thousand five hundred eighty-four hours at a practice site located in an approved rural health care underserved area. Eligible health care practitioners listed in this paragraph who provided health care services for at least seven hundred ninety-two hours but less than one thousand five hundred eighty-four hours at a practice site located in an approved rural health care underserved area during a taxable year are eligible for one-half of the tax credit amount.

C. Before an eligible health care practitioner may claim the rural health care practitioner tax credit, the practitioner shall submit a completed application to the department of health that describes the practitioner's clinical practice and contains additional information that the department of health may require. The department of health shall determine whether an eligible health care practitioner qualifies for the rural health care practitioner tax credit and shall issue a certificate to each qualifying eligible health care practitioner. The department of health shall provide the taxation and revenue department appropriate information for all eligible health care practitioners to whom certificates are issued in a secure manner on regular intervals agreed upon by both the taxation and revenue department and the department of health.

D. A taxpayer claiming the credit provided by this section shall submit a copy of the certificate issued by the department of health with the taxpayer's New Mexico income tax return for the taxable year. If the amount of the credit claimed exceeds a taxpayer's tax liability for the taxable year in which the credit is being claimed, the excess may be carried forward for three consecutive taxable years.

E. A taxpayer allowed a tax credit pursuant to this section shall claim the credit on forms and in a manner required by the department.

F. The tax credit provided by this section shall be included in the tax expenditure budget pursuant to Section 7-1-84 NMSA 1978, including the annual aggregate cost of the tax credit.

G. As used in this section:

(1) "eligible health care practitioner" means:

(a) a dentist or dental hygienist licensed pursuant to the Dental Health Care Act;

(b) a midwife that is a: 1) certified nurse-midwife licensed by the board of nursing as a registered nurse and licensed by the public health division of the department of health to practice nurse-midwifery as a certified nurse-midwife; or 2) licensed midwife licensed by the public health division of the department of health to practice licensed midwifery;

(c) an optometrist licensed pursuant to the provisions of the Optometry Act;

(d) an osteopathic physician licensed pursuant to the provisions of the Medical Practice Act;

(e) a physician licensed pursuant to the provisions of the Medical Practice Act or a physician assistant licensed pursuant to the provisions of the Physician Assistant Act;

(f) a podiatric physician licensed pursuant to the provisions of the Podiatry Act;

(g) a psychologist licensed pursuant to the provisions of the Professional Psychologist Act;

(h) a registered nurse licensed pursuant to the provisions of the Nursing Practice Act;

(i) a pharmacist licensed pursuant to the provisions of the Pharmacy Act;

(j) a licensed clinical social worker or a licensed independent social worker licensed pursuant to the provisions of the Social Work Practice Act;

(k) a professional mental health counselor, a professional clinical mental health counselor, a marriage and family therapist, an alcohol and drug abuse counselor or a professional art therapist licensed pursuant to the provisions of the Counseling and Therapy Practice Act; and

(l) a physical therapist licensed pursuant to the provisions of the Physical Therapy Act;

(2) "health care underserved area" means a geographic area or practice location in which it has been determined by the department of health, through the use of indices and other standards set by the department of health, that sufficient health care services are not being provided;

(3) "practice site" means a private practice, public health clinic, hospital, public or private nonprofit primary care clinic or other health care service location in a health care underserved area; and

(4) "rural" means a rural county or an unincorporated area of a partially rural county, as designated by the health resources and services administration of the United States department of health and human services.

(Laws 2025, Chapter 130, Section 40)

7-2-18.23. REPEALED JULY 1, 2025

7-2-18.24. GEOTHERMAL GROUND; COUPLED HEAT PUMP TAX CREDIT.

A. A taxpayer who files an individual New Mexico income tax return for a taxable year beginning on or after January 1, 2024 and who purchases and installs after May 15, 2024 but before December 31, 2034 a geothermal ground-coupled heat pump in a residence, business or agricultural enterprise in New Mexico owned by that taxpayer may apply for, 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 income tax credit". The total geothermal ground-coupled heat pump income tax credit allowed to a taxpayer shall not exceed nine thousand dollars ($9,000). The department shall allow a geothermal ground-coupled heat pump income tax credit only for geothermal ground-coupled heat pumps that are certified pursuant to Subsection C of this section and installed by a nationally accredited ground source heat pump installer.

B. That portion of a geothermal ground-coupled heat pump income tax credit that exceeds a taxpayer's tax liability in the taxable year in which the credit is claimed shall be refunded to the taxpayer.

C. 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 income 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 maximum annual aggregate of credits that may be certified in a calendar year by the energy, minerals and natural resources department is four million dollars ($4,000,000). That department shall not certify a tax credit for which a taxpayer claims a 2021 sustainable building tax credit using a geothermal ground-coupled heat pump as a component of qualification for the rating system certification level used in determining eligibility for that credit. Completed applications for the credit shall be considered in the order received. The energy, minerals and natural resources department shall provide the department appropriate information for all certificates of eligibility in a secure manner on regular intervals agreed upon by both departments.

E. A taxpayer who otherwise qualifies and claims a geothermal ground-coupled heat pump income tax credit with respect to property 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 property shall not exceed the amount of the credit that could have been claimed by a sole owner of the property.

F Married individuals who file separate returns for a taxable year in which they could have filed a joint return may each claim only one-half of the credit that would have been allowed on a joint return.

G. A taxpayer allowed a tax credit pursuant to this section shall claim the credit on forms and in a manner required by the department.

H. The credit provided by this section shall be included in the tax expenditure budget pursuant to Section 7-1-84 NMSA 1978, including the annual aggregate cost of the tax credit.

I. As used in this section, "geothermal ground-coupled heat pump" means a heating and refrigerating system that directly or indirectly utilizes available heat below the surface of the earth for distribution of heating and cooling or domestic hot water and that has either a minimum coefficient of performance of three and four-tenths or an efficiency ratio of sixteen or greater. *(Laws 2025, Chapter 130, Section 41)*

3.3.32.7 DEFINITIONS:

A. “Accredited installer” means a state of New Mexico licensed Professional Engineer (P.E.) or a New Mexico licensed contractor who has at least one individual who has successfully completed the Ground-Source Heat Pump systems installation course provided by the International Ground Source Heat Pump Association (IGSHPA).

B. “Annual aggregate” means the maximum annual aggregate amount of tax credits that may be certified in a calendar year available to individual and corporate taxpayers.

C. “Applicant” means an individual taxpayer(s) who purchased and installed an operating geothermal ground-coupled heat pump system in New Mexico and who has submitted an application to the department for a certificate of eligibility for a geothermal ground-coupled heat pump tax credit

D. “Application package” means a completed online application and supporting documents, as attachments, that an applicant submits to the division to apply for a certificate of eligibility for a geothermal ground-coupled heat pump tax credit.

E. “Certificate of eligibility” means the document, with a unique certification number, that specifies the amount and taxable year for an approved geothermal ground-coupled heat pump tax credit.

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

G. “Division” means the energy, minerals and natural resources department’s energy conservation and management division.

H. “Geothermal ground-coupled heat pump" means a heating and refrigerating system that directly or indirectly utilizes available heat below the surface of the earth for distribution of heating and cooling or domestic hot water and that has either a minimum coefficient of performance of three and fourtenths or an energy efficiency ratio of 16 or greater.

I “Geothermal ground-coupled heat pump system” is a geothermal ground-coupled heat pump and its main component sections such as a ground loop system, heat pump unit, distribution system, control system, and auxiliary components.

J. “Tax credit” means the state geothermal ground-coupled heat pump personal income tax credit

K. “Taxpayer” means an individual subject to the tax imposed by the Income Tax Act Section 72-1 NMSA 1978.

L. “Taxpayer identification number” means the taxpayer’s nine-digit social security number. *[3.3.32.7 NMAC - Rp 3.3.32.7 NMAC, 11/18/2025]*

3.3.32.8 GENERAL PROVISIONS:

A. The state tax credit may be claimed for taxable years beginning on or after January 1, 2024, but before January 1, 2035.

B. A taxpayer who files an individual New Mexico income tax return for a taxable year beginning on or after January 1, 2024 and who purchases and installs after May 15, 2024, but before December 31, 2034, an operating geothermal ground-coupled heat pump in a residence, business or agricultural enterprise in New Mexico owned by that taxpayer may apply for, and the department may certify, a tax credit of up to thirty percent of the purchase and installation costs of the geothermal ground-coupled heat pump system.

C. The department will certify a geothermal ground-coupled heat pump income tax credit only for geothermal ground-coupled heat pumps that are installed by an accredited installer. The department will accept any of the following accreditations from IGSHPA:

(1) Residential/Commercial Installation Tech
(2) Residential /Lt. Commercial GHX Installer
(3) Residential/Commercial Service Technician
(4) GSHP Residential/Commercial System Design
(5) Accredited Installer
(6) Certified Residential Designer
(7) Certified GeoExchange Designer
(8) Certified Inspector

D. The geothermal ground-coupled heat pump shall meet the applicable requirements of the most current New Mexico building code, the New Mexico residential building code, the New Mexico electrical code, the New Mexico mechanical code and the New Mexico plumbing code; shall be installed under a construction permit and shall be inspected and passed by the code official having jurisdiction.

E. If multiple taxpayers own an interest in the property through a partnership or business association, each may claim a tax credit only in proportion to their ownership interest. The application must identify each taxpayer on proof of property ownership when applying for the credit.

F. The department will not certify a tax credit for which a taxpayer claims a 2021 sustainable building tax credit using that geothermal ground-coupled heat pump as a component of qualification for the rating system certification level used in determining eligibility for that credit.

G. If the heat pump was used to meet the energy reduction requirement under the 2021 sustainable building tax credit, energy conserving products, the applicant is ineligible to claim a state tax credit under this section.

[3.3.32.8 NMAC – Rp 3.3.32.8 NMAC, 11/18/2025]

3.3.32.9 TAX CREDIT ADMINISTRATION:

A. The purpose of the department's certification program is to evaluate and certify the eligibility of a geothermal ground-coupled heat pump system.

B. A taxpayer may apply for certification of a geothermal ground-coupled heat pump tax credit from the department in the manner prescribed by the division. The department will not accept paper applications or applications submitted by e-mail unless specifically authorized by the division.

C. To receive a geothermal ground-coupled heat pump tax credit certificate, a taxpayer shall apply to the department on forms and in the manner prescribed by the department within twelve months following the calendar year in which the system was installed.

D. An application package for a geothermal ground-coupled heat pump tax credit shall include a completed state tax credit electronic application and all required attachments.

E. The application package shall meet the requirements of 3.3.32 NMAC. If an application package fails to meet the requirement, the department may disapprove the application.

F. After the department has certified an application, applicants may not amend the certified application package for that geothermal ground-coupled heat pump system.

G. If the department determines that the taxpayer(s) meets the tax credit requirements, the department shall issue a certificate of eligibility to the taxpayer providing the amount of tax credit and the taxable year for which the credit may be claimed.

H. If an applicant has received a tax credit for a geothermal ground-coupled heat pump system under this part, the geothermal ground-coupled heat pump system may not be used to meet the requirements for other tax credits available under state law.

I. The date on which a geothermal ground-coupled heat pump system receives a passing inspection from the local building authority determines the fund year in which the system will be certified. This inspection date serves as official confirmation that the system complies with all applicable codes and standards and is thus complete and ready for service.

[3.3.32.9 NMAC -3.3.32.9 NMAC, 11/18/2025]

3.3.32.10 APPLICATION DATA:

A. The department will not accept paper applications or applications submitted by e-mail unless specifically authorized by the division.

B. To be considered complete, an application must include the state tax credit application form and all required attachments; partial applications will not be accepted.

C. If there are multiple owners of the property on which the geothermal ground-coupled heat pump system is installed that wish to apply for the credit, they must submit a joint application.

D. The application package must meet the requirements of 3.3.32 NMAC. If an application package fails to meet any requirement, the department may disapprove the application.

E. A complete application form shall include the following information:

(1) The applicant's name, mailing address, e-mail address, telephone number

and the applicant's social security number.

(2) The address where the geothermal ground-coupled heat pump system is located.

(3) The geothermal ground-coupled heat pump system's type.

(4) The date the geothermal ground-coupled heat pump system received a passing inspection from the local building authority.

(5) The accredited installer's name, address, email address, telephone number, license category.

(6) Manufacturer's heat pump model, specifications, and efficiency ratings, including proof that the system has a minimum coefficient of performance of 3.4 or an energy efficiency ratio of 16 or greater.

(7) A statement the applicant signed and dated, which may be a form of electronic signature if approved by the department, agreeing:

(a) That all information provided in the application package is true and correct to the best of the applicant's knowledge.

(b) Applicant has read the certification requirements contained in 3.3.32 NMAC.

(c) Applicant acknowledges that there are annual aggregate tax credit limits in place for geothermal ground-coupled heat pump systems.

(d) Applicant acknowledges that they have not claimed a 2021 Sustainable Building Tax Credit for using this same geothermal ground-coupled heat pump system as a component of qualification, or for the rating system certification level achieved.

(e) Each geothermal ground-coupled heat pump income tax credit shall not exceed nine thousand dollars ($9,000), per taxpayer, per taxable year.

(f) Applicant agrees to make changes the department requires to the geothermal ground-coupled heat pump application package for compliance with 3.3.32 NMAC.

(g) For the purposes of monitoring compliance with 3.3.32 NMAC, applicant agrees to allow the department or its authorized representative to inspect the geothermal ground-coupled heat pump system owned by the applicant that is submitted for certification, upon the department providing at least five days' notice to the applicant.

(h) Applicant understands that the department must certify the geothermal groundcoupled heat pump system documents in the application package before the applicant becomes eligible for a state tax credit.

(i) If, after the department has issued a certification, any of these requirements are found to be insufficient, the department may rescind the certification.

[3.3.32.10 NMAC - Rp 3.3.32.10 NMAC, 11/18/2025]

3.3.32.11 APPLICATION ATTACHMENTS:

A. An application for geothermal ground-coupled heat pump system shall contain the following information as attachments:

(1) A copy of the property deed, mortgage statement, or property tax bill, or other documents showing the taxpayer's ownership or proportional ownership of the property where the ground-coupled heat pump system was installed.

(2) An itemized invoice from the installer showing the cost of equipment and labor cost for the geothermal ground-coupled heat pump system installation. An itemized invoice is a detailed list of all goods and services provided in a transaction, on official vendor letterhead, clearly identifying contractor, business name and contact information, with a detailed itemized breakdown of labor costs, specifying the work performed and corresponding charges. Some costs are excluded as expenses and are listed in section 3.3.32.15 NMAC.

(3) Manufacturer's documentation showing that the geothermal ground-coupled heat pump's model, specifications, and performance ratings meet the required standards.

(4) A copy of the installer's certification from a nationally accredited

groundsource heat pump certification program

(5) Final inspection report or certification from a local building authority confirming that the installation complies with applicable building codes and safety standards.

(6) technical specifications.

B. The geothermal ground-coupled heat pump system's design schematic and The New Mexico energy, minerals, and natural resources department may require additional information from applicants seeking the geothermal ground-coupled heat pump tax credit to verify eligibility. Applicants should be prepared to provide any necessary details to ensure compliance with program requirements. *[3.3.32.11 NMAC - Rp 3.3.32.11 NMAC, 11/18/2025]*

3.3.32.12 APPLICATION REVIEW PROCESS:

A. The department shall consider completed applications in the order received.

B. The department shall review the application package to calculate the state tax credit; check the accuracy of the applicant's documentation and determine whether the department shall certify the geothermal ground-coupled heat pump system. The department may disapprove an application that is incomplete, incorrect, or fails to meet the approval criteria.

C. If the department finds that the application package meets the requirements of 3.3.32 NMAC, and a state tax credit is available, the department shall certify the applicant's geothermal ground-coupled heat pump income tax credit.

D. If applicable, the department's disapproval notification will state the reasons why the department returned the application.

E. An applicant may have the opportunity to resubmit the electronic application for a disapproved project, and application will be placed back at the beginning of the queue and reviewed as if it were a new application.

[3.3.32.12 NMAC - Rp 3.3.32.12 NMAC, 11/18/2025]

3.3.32.13 SAFETY, CODES AND STANDARDS:

A. Geothermal ground-coupled heat pump systems that the department may certify must comply 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 installs the geothermal groundcoupled heat pump system.

B. Geothermal ground-coupled heat pump systems that the department may certify must comply with all applicable utility company or heating fuel vendor requirements, if the system is served by a utility company or heating fuel vendor.

C. Geothermal ground-coupled heat pump systems that the department may certify shall Meet the design, permitting and installation 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 Sections 3-17-6 and 3-18-6 NMSA 1978.

[3.3.32.13 NMAC - Rp 3.3.32.11, 11/18/2025]

3.3.32.14 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) Be a complete system that collects and distributes geothermal energy to the residence, business or agricultural enterprise in New Mexico that it serves.

(3) Have a minimum coefficient of performance of three and four-tenths or an energy efficiency ratio of 16 or greater.

(4) To be eligible for the geothermal ground-coupled heat pump income tax

credit as an upgrade or expansion of an existing system, the project must include the installation of a new heat pump that functions as an active component of the expanded system. To be eligible, the newly installed heat pump must be integrated into the operational infrastructure of the system, contributing directly to its heating and cooling performance.

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 or is not permanently located in New Mexico.

(3) A system not serving a permanent 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 any previous application for any tax credit.

C. System components and installation processes that the department may include in the cost calculation and certify include:

(1) above-ground fluid coolers;

(2) air handlers;

(3) all materials and costs associated with vertical well drilling and horizontal trenching including well casing and tubing;

(4) borehole grout;

(5) boreholes backfill sand or other medium;

(6) buffer tanks;

(7) chill water tanks;

(8) collectors;

(9) compressors;

(10) compressor gas;

(11) controllers;

(12) desuperheaters;

(13) evaporators;

(14) expansion metering devices;

(15) expansion tanks;

(16) expansion valves;

(17) fans;

(18) flow center circulators;

(19) heat exchange refrigerant;

(20) heat exchangers;

(21) hot water tanks;

(22) initial refrigerant;

(23) manifolds;

(24) pumps;

(25) refrigerant compressors;

(26) refrigerant reversing valves;

(27) reverse return headers;

(28) storage tanks;

(29) supply headers;

(30) the system or components directly performing geothermal heating, geothermal air heating, geothermal process heating, geothermal cooling or combinations of geothermal these;

(31) thermal conductivity testing;

(32) thermal expansion valve or “txv”;

(33) thermostats;

(34) three-way valves;
(35) tubing;
(36) tubing connections and fittings;
(37) tubing u-bend connections;
(38) turnarounds, and
(39) valves.

[3.3.32.14 NMAC - Rp 3.3.32.12 NMAC, 11/18/2025]

3.3.32.15 CALCULATING THE GEOTHERMAL GROUND-COUPLED HEAT PUMP SYSTEM COST:

A. The state tax credit shall be based on the equipment, materials, and labor costs of a geothermal ground-coupled heat pump system that the department has certified.

B. The department shall certify only those equipment, materials and labor costs of a geothermal ground-coupled heat pump system that are documented in writing. Self-installed systems may be eligible for these costs, except that self-installers may not claim their own labor but may claim labor they hire and must meet all requirements.

C. The cost of a geothermal ground-coupled heat pump system the department certifies shall be the net cost of acquiring the system and shall not include the following:

(1) expenses, including but not limited to:

(a) adjacent structure modification costs;
(b) contractor or inspector travel, mileage, or overnight hotel stays;
(c) costs of structural, surface protection and other building elements that would be included in construction if a geothermal ground-coupled heat pump system were not installed;
(d) financing costs or loan interest;
(e) land costs or property taxes;
(f) legal and court costs;
(g) marketing, promotional or advertising costs;
(h) membership fees;
(i) mortgage, lease or rental costs of the property;
(j) non-descriptive miscellaneous/other items;
(k) repair, operating, or maintenance costs;
(l) research fees or patent search fees;
(m) system resale costs;
(n) system visual barrier costs;
(o) unpaid labor or the applicant's labor;
(p) unpaid equipment or materials;
(q) vegetation maintenance costs;
(r) warranty or extended warranty costs;

(2) income, including:

(a) payments the accredited 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 accredited 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.

D. The division shall make the final determination of the net cost that the department certifies is eligible for tax credit.

[3.3.32.15 NMAC – Rp, 3.3.32.13 NMAC, 11/18/2025]

3.3.32.16 CALCULATING TAX CREDIT:

A. A geothermal ground-coupled heat pump tax credit the department has certified shall not exceed:

(1) Up to thirty percent of the purchase and installation costs of the system, and

(2) Nine thousand dollars ($9,000) per taxpayer, per taxable year

B. The taxation and revenue department will make the final determination of the amount of state tax credit.

C. The maximum annual aggregate of credits that may be certified in a calendar year by the department is four million dollars ($4,000,000). Applications for certification received after this limitation has been met in a calendar year will not be approved.
[3.3.32.16 NMAC - N, 11/18/2025]

3.3.32.17 CLAIMING THE STATE TAX CREDIT:

A. After EMNRD issues a certificate of eligibility to an applicant a certificate of eligibility holder may then submit a claim for the state geothermal ground-coupled heat pump tax credit with the taxation and revenue department.

B. To claim the tax credit, a taxpayer 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 forms the taxation and revenue department has approved and any other information the taxation and revenue department requires.

C. That portion of a geothermal ground-coupled heat pump income tax credit that exceeds a taxpayer's tax liability in the taxable year in which the credit is claimed may be refunded to the taxpayer. *[3.3.32.17 NMAC - Rp, 3.3.32.14 NMAC, 11/18/2025]*

3.3.32.18 INSPECTION OF GEOTHERMAL GROUND-COUPLED HEAT PUMP
For the purposes of monitoring compliance with 3.3.32 NMAC, the department or its authorized representative shall have the authority to inspect the geothermal ground-coupled heat pump system owned by an applicant who has submitted an application for certification, upon the department providing at least five days' notice to the applicant.
[3.3.32.18 NMAC - N, 11/18/2025]

7-2-18.25. REPEALED JULY 1, 2023

7-2-18.26. AGRICULTURAL BIOMASS INCOME TAX CREDIT.

A. A taxpayer who owns a dairy or feedlot and who files an individual New Mexico income tax return for a taxable year ending prior to January 1, 2030, may claim, 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 tax credit created in this section may be referred to as the "agricultural biomass income tax credit".

B. Subject to the limitations pursuant to Subsection D of this section, a taxpayer shall apply for certification of eligibility for the agricultural biomass income tax credit from the energy, minerals and natural resources department on forms and in the manner prescribed by that department. Completed applications shall be considered in the order received. A dated certificate of eligibility shall be issued to the taxpayer providing the amount of credit for which the taxpayer is eligible and the taxable year in which the credit may be claimed.

C. The energy, minerals and natural resources department shall:

(1) 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 income tax credit; and

(2) provide the department appropriate information for all certificates of eligibility in a secure manner on regular intervals agreed upon by both departments.

D. The aggregate amount of agricultural biomass income tax credits and agricultural biomass corporate income tax credits that may be certified is five million dollars ($5,000,000) per calendar year. Applications for certification received after this limitation shall not be approved. Any amount of credit that remains unused in a taxable year may be available for certification for a maximum of four consecutive taxable years until the credit is fully utilized.

E. Any portion of the agricultural biomass income tax credit that exceeds a taxpayer's income tax liability in the taxable year in which the credit is being claimed may be carried forward for up to three consecutive taxable years. A certificate of eligibility for an agricultural biomass income tax credit may be sold, exchanged or otherwise transferred to another taxpayer for the full value of the credit. 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.

F. A taxpayer who otherwise qualifies and claims an agricultural biomass income tax credit with respect to a dairy or feedlot owned by a partnership or other business association of which the taxpayer is a member may claim the credit only in proportion to that taxpayer's interest in the partnership or business association. The total agricultural biomass income tax credits claimed in the aggregate with respect to the same dairy or feedlot by all members of the partnership or business association shall not exceed the amount of the credit that could have been claimed by a single owner of the dairy or feedlot.

G. Married individuals who file separate returns for a taxable year in which they could have filed a joint return may each claim only one-half of the credit that would have been allowed on a joint return.

H. A taxpayer who claims an agricultural biomass income tax credit shall not also claim an agricultural biomass corporate income tax credit for transportation of the same agricultural biomass on which the claim for that agricultural biomass income tax credit is based.

I. A taxpayer allowed a tax credit pursuant to this section shall claim the credit on forms and in a manner required by the department.

J. The tax credit provided by this section shall be included in the tax expenditure budget pursuant to Section 7-1-84 NMSA 1978, including the annual aggregate cost of the tax credit.

K. 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 2025, Chapter 130, Section 42)

3.3.33.7 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 diary 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 personal 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 personal 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 personal 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 personal income tax returns as defined by the United States internal revenue service.

T. “Taxpayer” means a diary or feedlot operator or lessee who is liable for payment of gross receipts tax or personal income tax.

U. “Taxpayer identification number” means an applicant’s social security number or 11 digit number issued to the applicant upon registration with the taxation and revenue department to pay gross receipts and individual 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 catagories (apron scrape, corral scrape and greenwater) of the biomass not transported to a qualifying facility during the time period.

[3.3.33.7 NMAC - N, 02/29/2012]

3.3.33.8 GENERAL PROVISIONS:

A. The agricultural biomass personal income tax credit is available to taxpayers filing a personal income tax return for taxable years beginning on or after January 1, 2011 and ending prior to January 1, 2030. Certificates of transportation pursuant to 3.3.33 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, 2030.

B. The amount of the agricultural biomass income tax credit is calculated at $5.00 per wet ton. The maximum amount of the annual combined total of all agricultural biomass income tax credits and all agricultural biomass corporate income tax credits allowed is $5,000,000.

[3.3.33.8 NMAC - N, 02/29/2012; A, 09/29/2020]

3.3.33.9 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, social security number or 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 3.3.33 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 3.3.33 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 3.3.33 NMAC's requirements and be materially complete.

[3.3.33.9 NMAC - N, 02/29/2012]

3.3.33.10 APPLICATION REVIEW PROCESS AND CERTIFICATION

A. The department shall review the application within 30 days of receipt. If the application package complies with 3.3.33 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 3.3.33 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, social security number, 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 15th 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.

[3.3.33.10 NMAC - N, 02/29/2012]

7-2-18.27 AND 7-2-18.28. REPEALED JULY 1, 2023

7-2-18.29. 2015 SUSTAINABLE BUILDING INCOME TAX CREDIT.

A. The tax credit provided by this section may be referred to as the "2015 sustainable building income tax credit". The 2015 sustainable building income 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; provided that the construction, renovation or installation project is completed prior to April 1, 2023. The tax credit provided in this section may not be claimed with respect to the same sustainable building for which the 2015 sustainable building corporate income tax credit, the 2021 sustainable building income tax credit or the 2021 sustainable building corporate income tax credit has been claimed.

B. The purpose of the 2015 sustainable building income tax credit is to encourage the construction of sustainable buildings and the renovation of existing buildings into sustainable buildings.

C. A taxpayer who files an income tax return may claim a 2015 sustainable building income tax credit if the requirements of this section are met.

D. For taxable years ending on or before December 31, 2024, the 2015 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, 2024, the 2015 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 2015 sustainable building income tax credit from the energy, minerals and natural resources department on forms and in a manner prescribed by that department after the construction, installation or renovation of the sustainable building is complete. Completed 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 dated certificate of eligibility to the building owner providing the amount of credit for which the building owner is eligible and the taxable year in which the credit may be claimed, 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 2015 sustainable building income tax credit for which the building owner is eligible. The energy, minerals and natural resources department may issue rules governing the procedure for administering the provisions of this subsection.

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 aggregate amount of

2015 sustainable building income tax credits represented by certificates of eligibility issued by the energy, minerals and natural resources department pursuant to this section and Section 7-2A-28 NMSA 1978 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. The energy, minerals and natural resources department shall provide the department appropriate information for all certificates of eligibility in a secure manner on regular intervals agreed upon by both departments.

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 or 7-2-18.31 NMSA 1978 may not be used as a component of qualification for the rating system certification level used in determining eligibility for the 2015 sustainable building income tax credit, unless a solar market development tax credit pursuant to Section 7-2-18.14 or 7-2-18.31 NMSA 1978 has not been claimed with respect to that system and the building owner and the taxpayer claiming the 2015 sustainable building income tax credit certify that such a tax credit will not be claimed with respect to that system.

J. To claim the 2015 sustainable building income tax credit, the building owner shall provide to the 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 department may require to determine the amount of the tax credit for which the building owner is eligible.

K. Any portion of a 2015 sustainable building income tax credit that exceeds the taxpayer's income tax liability in the taxable year for which the credit is claimed may be carried forward for up to seven consecutive taxable years.

L. A taxpayer who otherwise qualifies and claims a 2015 sustainable building income 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.

M. Married individuals who file separate returns for a taxable year in which they could have filed a joint return may each claim only one-half of the 2015 sustainable building income tax credit that would have been allowed on a joint return.

N. The tax credit provided by this section shall be included in the tax expenditure budget pursuant to Section 7-1-84 NMSA 1978 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 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 system 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 2025, Chapter 130, Section 43)

3.3.34.7 DEFINITIONS:

“2015 sustainable building tax credit” means the amendments passed by the legislature in 2021 to the new sustainable building tax credit in the Income Tax Act and the Corporate and Franchise Tax Act. The name of the new sustainable building tax credit was changed to the 2015 sustainable building tax credit.

A. “Annual cap” means the annual total amount of the 2015 sustainable building tax credit available to taxpayers owning sustainable buildings.

B. “Applicant” means a taxpayer who owns a sustainable residential or commercial building or manufactured home in New Mexico and who desires to have the department issue a certificate of eligibility for a 2015 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 2015 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. “Building type” means the primary use of a building or section of a building as defined in target finder.

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 2015 sustainable building tax credit, the system certification level awarded to the building, the amount of qualified occupied square footage, a calculation of the maximum amount of the 2015 sustainable building tax credit for which the owner would be eligible and the date of issuance.

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;
(3) LEED-H platinum or build green New Mexico emerald;
(4) LEED-NC silver or LEED-NC gold or LEED-NC platinum;
(5) LEED-EB (O&M) or LEED-CS silver;
(6) LEED-EB (O&M) or LEED-CS gold;
(7) LEED-EB (O&M) or LEED-CS platinum; or
(8) LEED-CI silver or LEED-CI gold or LEED-CI platinum.

I. “Code official” means the officer or other designated authority charged with the administration and enforcement of the building code.

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” means has achieved a HERS of 60 or lower for a sustainable residential building; or 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 for a sustainable commercial building.

M. “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 and other requirements.

N. “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.

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

P. “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.

Q. “LEED certification” means the verification by the United States green building council, or a department-approved verifier, that a building project has met certain prerequisites and performance benchmarks or credits.

R. “Multifamily” means more than one family dwelling such as two-family dwellings, multiple single-family dwellings such as townhouses and buildings three stories or less in height above grade plane.

S. “Not a multifamily dwelling unit that is commercial” mean a single-family unit occupied by a renter or leasee or a work-live unit.

T. “Notice of approval” means that the work complies in all respects with the latest building code and has been approved by the code official.

U. “O&M” means operation and maintenance.

V. “Project completion” means notice of approval of installation of project prior to April 1, 2023. New buildings and renovations of existing buildings and installations shall be completed before April 1, 2023.

W. “Rating system” means the LEED 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 issued to a taxpayer between January 1, 2006, and December 31, 2016, for a solar energy system the department has certified.

Z. “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.

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

BB. “Taxpayer” means any individual subject to the tax imposed by the Income Tax Act, 7-2-1 et seq. NMSA 1978.

CC. “Taxpayer identification number” means the taxpayer’s nine-digit social security number or employer identification number provided by a business enterprise.

DD. “Verifier” means an entity the department approves to provide certifications under the build green New Mexico or LEED rating systems.

[3.3.34.7 NMAC - Rp, 3.3.34.7 NMAC, 02/08/2022]

3.3.34.8 GENERAL PROVISIONS:

A. A person who is the owner of a building in New Mexico that has been constructed, renovated or manufactured or is a sustainable residential or sustainable commercial building and that receives certification on or after January 1, 2017, and prior to April 1, 2023, may receive a certificate of eligibility for a 2015 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 2015 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 an eligible 2015 sustainable residential building tax funds are within the annual residential 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, except for the last taxable year when the 2015 sustainable building tax credit is in effect;

(2) if no 2015 sustainable residential building tax credit funds are available in a given taxable year, issue a certificate of eligibility for the next subsequent tax year in which funds are available, except for the last taxable year when the 2015 sustainable building tax credit is in effect; or

(3) the department may issue certificates of eligibility to applicants who meet the requirements for the 2015 sustainable residential buildings tax credit in a taxable year when applications for the 2015 sustainable residential buildings tax credit exceed the annual cap, but applications for the 2015 sustainable commercial buildings or manufactured housing tax credits are under the annual cap for that type of sustainable building by February 1 of any year in which the tax credit is in effect.

C. The total amount in a calendar year of the 2015 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 2015 sustainable building tax credit is within the annual commercial buildings 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 2015 sustainable commercial 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 2015 sustainable building tax credit is in effect; or

(3) the department may issue certificates of eligibility to applicants who meet the requirements for the 2015 sustainable building tax credit in a taxable year when applications for the 2015 sustainable commercial buildings tax credits exceed the annual cap and applications for the 2015 sustainable residential buildings or manufactured housing tax credits are under the annual cap for that type of sustainable building by February 1 of any year in which the tax credit is in effect.

D. In the event of a discrepancy between a requirement of 3.3.34 NMAC and an existing New Mexico taxation and revenue department rule promulgated before 3.3.34 NMAC's adoption, the existing rule governs.

E. All notices and applications required to be submitted to the department under 3.3.34 NMAC shall be submitted to the energy conservation and management division of the department.

F. There is a $375,000 annual cap for sustainable residential buildings that are manufactured housing.

[3.3.34.8 NMAC - Rp, 3.3.34.8 NMAC, 02/08/2022]

3.3.34.9 VERIFIER ELIGIBILITY FOR ALL BUILDINGS:

A. The department reviews the qualifications for verifiers of the build green New Mexico or LEED-H certifications or LEED commercial buildings, which shall be provided annually to the department, based on the following criteria:

(1) the verifier is independent from the homebuilders or homeowners or commercial building owner that may apply for certification;

(2) the verifier has adequate staff and expertise to provide certification services, including:

(a) experience in green 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.

E. The department notifies the verifier of the reasons for disapproving or rescinding eligibility as follows.

(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.

[3.3.34.9 NMAC - Rp, 3.3.34.9 NMAC, 02/08/2022]

3.3.34.10 APPLICATION FOR THE 2015 SUSTAINABLE BUILDING TAX CREDIT:

A. To obtain the 2015 sustainable building tax credit, a taxpayer shall apply for a certificate of eligibility with the department using either a department-developed application form or approved electronic application system as directed by the division director. An applicant may obtain the department-developed application form or access to the electronic application system from the department.

B. An application package shall include a completed application form and attachments as specified on the application form or by the electronic application system. The applicant shall submit the application form and required attachments at the same time. An applicant shall submit one application package for each sustainable building. The applicant shall submit all material in the application package on 8½ inch by 11-inch paper or using any approved electronic application system provided by the department as directed by the division director. If the applicant fails to submit the application form and required attachments at the same time as required by the division director the department may consider the application incomplete.

C. An applicant shall submit a complete application package to the department no later than February 1 of the taxable year for which the applicant seeks the 2015 sustainable building tax credit. If an applicant does not submit a complete application package by February 1, any remaining 2015 sustainable building tax credit funds under the cap may be used in that taxable year for completed 2015 sustainable building applications in another category. 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 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 or commercial buildings for projects eligible under LEED or build green New Mexico;

(7) the rating system under which the sustainable residential or commercial building was certified for projects eligible under LEED or build green New Mexico;

(8) the certification level achieved, if applicable;

(9) the HERS index; if applicable;

(10) documentation that applicant meets water efficiency standards to comply with water efficiency requirements of LEED and build green New Mexico programs;

(11) the date of rating system certification;

(12) project completion date;

(13) notice of approval from a code official shall be provided to document that construction, renovation or installation of project was completed before April 1, 2023; and

(14) 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 3.3.34 NMAC;

(c) if an onsite solar system is used to meet the requirements of either the rating system certification level applied for in the 2015 sustainable building tax credit or the energy reduction requirement achieved, the applicant did not claim a solar market development tax credit;

(d) applicant understands that there are annual caps for the 2015 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 2015 sustainable building tax credit; and

(f) applicant understands that the department issues a certificate of eligibility for the taxable year in which the sustainable building was certified or, if the 2015 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 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 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;

(5) for sustainable commercial buildings that are not multifamily dwelling units, a copy of the final LEED optimized 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 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;

(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;

(9) documentation to show project completion date such as a copy of a notice of approval from a building official; and

(10) other information the department needs to review the building project for the 2015 sustainable building tax credit.

F. If the requirements established by the department have been complied with, the department shall issue to the building owner a document granting a 2015 sustainable building tax credit with an identification number, date of issuance, 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 the 2015 sustainable building tax credit for which the building owner would be eligible.
[3.3.34.10 NMAC - Rp, 3.3.34.10 NMAC, 02/08/2022]

3.3.34.11 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 to establish the energy reduction requirement, the applicant shall include the following information in addition to the other application requirements:

(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 will use 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 or New Mexico licensed professional mechanical or 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.

[3.3.34.11 NMAC - N, 02/08/2022]

3.3.34.12 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. 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 2015 sustainable building tax credit, check accuracy of the applicant's documentation and determine whether the department issues a certificate of eligibility for the 2015 sustainable building tax credit.

D. If an applicant has claimed a solar market development tax credit (in effect January 1, 2006, through December 31, 2016) that solar system cannot be used to meet the requirements of either the certification level applied for, or the energy reduction achieved. If an applicant has received a solar market development tax credit for a system that is used to meet the requirements of the certification level applied for or the energy reduction achieved, the department shall disapprove the application for the 2015 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 2015 sustainable building tax credit is available, the department issues the certificate of eligibility for a 2015 sustainable building tax credit. If a 2015 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 except in the last year that the 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 and calculation of the maximum amount of the 2015 sustainable building tax credit for which the owner would be eligible.

[3.3.34.12 NMAC - Rp, 3.3.34.11 NMAC, 02/08/2022]

3.3.34.13 CALCULATING THE TAX CREDIT:

A. The department calculates the maximum 2015 sustainable building tax credit for sustainable residential and 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 occupied square footage less than or equal to 10,000 multiplied by $3.50; plus
next 40,000 square feet	the qualified occupied 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 occupied square footage greater than 50,000 and less than or equal to 500,000 multiplied by $.70
LEED-NC gold:	
first 10,000 square feet	equals the qualified occupied square footage less than or equal to 10,000 multiplied by $4.75; plus
next 40,000 square feet	the qualified occupied 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 occupied 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 occupied square footage less than or equal to 10,000 multiplied by $6.25; plus
next 40,000 square feet	the qualified occupied 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 occupied 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 occupied square footage less than or equal to 10,000 multiplied by $2.50; plus
next 40,000 square feet	the qualified occupied 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 occupied 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 occupied square footage less than or equal to 10,000 multiplied by $3.35; plus
next 40,000 square feet	the qualified occupied 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 occupied 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 occupied square footage less than or equal to 10,000 multiplied by $4.40; plus
next 40,000 square feet	the qualified occupied 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 occupied 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 occupied square footage less than or equal to 10,000 multiplied by $1.40; plus
next 40,000 square feet	the qualified occupied 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 occupied 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 occupied square footage less than or equal to 10,000 multiplied by $1.90; plus
next 40,000 square feet	the qualified occupied 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 occupied 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 occupied square footage less than or equal to 10,000 multiplied by $2.50; plus
next 40,000 square feet	the qualified occupied 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 occupied square footage greater than 50,000 and less than or equal to 500,000 multiplied by $.80

B. The department calculates the maximum 2015 sustainable building tax credit for residential (single family or 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 occupied 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 occupied 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 occupied 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 occupied square footage less than or equal to 2,000 multiplied by $3.00

C. The taxation and revenue department makes the final determination of the amount of the 2015 sustainable building tax credit.
[3.3.34.13 NMAC - Rp, 3.3.34.12 NMAC, 02/08/2022]

3.3.34.14 CLAIMING THE STATE TAX CREDIT:
To claim the 2015 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. The applicant shall submit the certificate to the taxation and revenue department no later than December 31, 2024.
[3.3.34.14 NMAC - Rp, 3.3.34.13 NMAC, 02/08/2022]

7-2-18.30. REPEALED JULY 1, 2025

7-2-18.31. NEW SOLAR MARKET DEVELOPMENT INCOME TAX CREDIT.

A. For taxable years ending prior to January 1, 2032, a taxpayer who is not a dependent of another individual and who, on or after March 1, 2020, purchases and installs a solar thermal system or a photovoltaic system in a residence, business or agricultural enterprise in New Mexico owned by that taxpayer or by a federally recognized Indian nation, tribe or pueblo and held in leasehold by that taxpayer may claim, and the department may allow, a credit against the taxpayer's tax liability imposed pursuant to the Income Tax Act in an amount provided in Subsection C of this section. The tax credit provided by this section may be referred to as the "new solar market development income tax credit".

B. The purpose of the new solar market development income tax credit is to encourage the installation of solar thermal and photovoltaic systems in residences, businesses and agricultural enterprises.

C. The department may allow a new solar market development income tax credit of ten percent of the purchase and installation costs of a solar thermal or photovoltaic system.

D. The new solar market development income tax credit shall not exceed six thousand dollars ($6,000) per taxpayer per taxable year. The department shall allow a tax credit only for solar thermal and photovoltaic systems certified pursuant to Subsection E of this section.

E. Subject to the limitation provided in Subsection F of this section, a taxpayer shall apply for certification of eligibility for the new solar market development income tax credit from the energy, minerals and natural resources department on forms and in the manner prescribed by that department. Completed applications shall be considered in the order received. The application shall include proof of purchase and installation of a solar thermal or photovoltaic system, that the system meets technical specifications and requirements relating to safety, code and standards compliance, solar collector orientation and sun exposure, minimum system sizes, system applications and lists of eligible components and any additional information that the energy, minerals and natural resources department may require to determine eligibility for the credit. A dated certificate of eligibility shall be issued to the taxpayer providing the amount of the new solar market development income tax credit for which the taxpayer is eligible and the taxable year in which the credit may be claimed. A certificate of eligibility for a new solar market development income tax credit may be sold, exchanged or otherwise transferred to another taxpayer for the full value of the credit. 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. The energy, minerals and natural resources department shall provide the department appropriate information for all certificates of eligibility in a secure manner on regular intervals agreed upon by both departments.

F. The aggregate amount of credits that may be certified pursuant to Subsection E of this section is as follows, and applications for certification received after these limitations have been met shall not be approved:

(1) for calendar years 2020 through 2023, twelve million dollars ($12,000,000) for each calendar year; provided that if this limitation has been met for any of those calendar years, an additional total of twenty million dollars ($20,000,000) in credits may be certified for all of those calendar years; and provided further that credits certified pursuant to this paragraph shall be claimed only for taxable year 2023; and

(2) for calendar years 2024 and thereafter, thirty million dollars ($30,000,000) for each calendar year.

G. A taxpayer may claim a new solar market development income tax credit for the taxable year in which the taxpayer purchases and installs a solar thermal or photovoltaic system. To receive a new solar market development income tax credit, a taxpayer shall claim the credit on forms and in the manner prescribed by the department within twelve months following the calendar year in which the system was installed; provided that, for a taxpayer who receives a certificate of eligibility pursuant to Paragraph (1) of Subsection F of this section, the taxpayer shall apply to the department within twelve months following the calendar year in which the certification is made. The claim shall include a certification made pursuant to Subsection E of this section.

H. That portion of a new solar market development income tax credit that exceeds a taxpayer's tax liability in the taxable year in which the credit is claimed shall be refunded to the taxpayer.

I. Married individuals filing separate returns for a taxable year for which they could have filed a joint return may each claim only one-half of the new solar market development income tax credit that would have been claimed on a joint return.

J. A taxpayer may be allocated the right to claim a new solar market development income tax credit in proportion to the taxpayer's ownership interest if the taxpayer owns an interest in a business entity that is taxed for federal income tax purposes as a partnership or limited liability company and that business entity has met all of the requirements to be eligible for the credit. The total credit claimed by all members of the partnership or limited liability company shall not exceed the allowable credit pursuant to this section.

K. A taxpayer allowed a tax credit pursuant to this section shall claim the credit on forms and in a manner required by the department.

L. The tax credit provided by this section shall be included in the tax expenditure budget pursuant to Section 7-1-84 NMSA 1978, including the annual aggregate cost of the tax credit.

M. As used in this section:

(1) "photovoltaic system" means an energy system that collects or absorbs sunlight for conversion into electricity; and

(2) "solar thermal system" means an energy system that collects or absorbs solar energy for conversion into heat for the purposes of space heating, space cooling or water heating.

(Laws 2025, Chapter 130, Section 44)

3.3.14.7 DEFINITIONS:

A. “Applicant” means a New Mexico taxpayer that has installed a solar energy system at a residence, business or agricultural enterprise that the taxpayer owns or a New Mexico taxpayer who has installed a solar energy system at a residence, business, or agricultural enterprise held in leasehold and located on a federally recognized Indian nation, tribe or pueblo that is located in whole or in part within New Mexico and who requests that the department certify the solar energy system pursuant to 3.3.14 NMAC so that the taxpayer may receive a state tax credit.

B. “Application package” means the application documents an applicant submits to the department for certification to receive a state tax credit.

C. “Array” means the collectors of a solar thermal system or the modules of a photovoltaic system.

D. “Building code authority” means the New Mexico regulation and licensing department, construction industries department or the local government agency having jurisdiction for building, electrical and mechanical codes.

E. “Certified” or “certification” means department approval of a solar energy system, which makes the applicant owning the system eligible for a state tax credit.

F. “Collector” means the solar thermal system component that absorbs solar energy for conversion into heat or electricity.

G. “Collector aperture” means the area of a solar thermal collector that absorbs solar energy for conversion into usable heat.

H. “Component” means a solar energy system’s equipment and materials.

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

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

K. “Energy system” means an engineered system that delivers solar energy to an end use by flow of fluid or electricity caused by energized components such as pumps, fans, inverters, or controllers.

L. “Installed”, or “installation” means the direct work of placing a solar energy system into service to operate and produce energy at the expected level for a system of its size, which shall include completion of any required final inspections, unless the installation is on tribal or pueblo land in which case contractor certification of installation shall suffice for the system to meet this definition.

M. “Mobile” means not permanently connected to a residence, business or agricultural enterprise or connected to a mobile vehicle that is a part of a residence, business, or agricultural enterprise.

N. “Module” means the photovoltaic system component that absorbs sunlight for conversion into electricity.

O. “New” means the condition of being recently manufactured and not used previously in any installation.

P. “New solar market development income 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 pursuant to 3.3.14 NMAC.

Q. “Non-residential” means a business or agricultural enterprise.

R. “OG” means operating guidelines that the solar rating and certification corporation has or will establish including system performance or component characteristics as defined in the applicable SRCC directory. Operating guidelines shall be from SRCC directory in effect on March 1, 2006, or any applicable successive revisions.

S. “Solar collector” means a solar thermal collector or photovoltaic module.

T. “Solar energy system” means a solar thermal system or photovoltaic system.

U. “Solar storage tank” means a tank provided as a component in a solar thermal system that is not heated by electricity or a heating fuel. V. W.

V. “SRCC” means the solar rating and certification corporation.

W. “Standard test conditions” means the environmental conditions under which a manufacturer tests a photovoltaic module for power output, which are a photovoltaic cell temperature of 25 degrees Celsius and solar insolation of 1000 watts per square meter on the photovoltaic cell surface.

X. “State tax credit” means the new solar market development income tax credit.

Y. “Substantially Complete” means a system that produces energy to the benefit of the residence, business or agricultural enterprise and has been inspected by the applicable authorities. A system that is substantially complete shall be eligible for the tax credit even if the original installation contractor is no longer in business.

Z. “Supplemental state tax credit” means the new solar market development income tax credit awarded for eligible solar energy systems installed in calendar years 2020-2023 when certification was not previously awarded due to exhaustion of credit certification limits.

[3.3.14.7 NMAC - Rp, 3.3.14.7 NMAC, 7/16/2024]

3.3.14.8 GENERAL PROVISIONS:

A. The state tax credit may be claimed for taxable years prior to January 1, 2032.

B. Only a New Mexico individual taxpayer, corporation or agricultural enterprise who has purchased and installed, on property that he, she, or the corporation owns, or, in the case of a federally recognized Indian nation, tribe or pueblo, holds in leasehold, an operating or substantially complete solar energy system that the department has certified pursuant to this part is eligible for a state tax credit for the tax year in which the system is installed, unless the system is eligible for a supplemental state tax credit.

C. An applicant must own the residence, business, or agriculture enterprise on which the solar energy system is located to qualify for the tax credit, unless the applicant has installed a solar energy system at a residence, business, or agricultural enterprise located on a federally recognized Indian nation, tribe or pueblo located in whole or in part within New Mexico, in which case the applicant must hold the property in leasehold from the applicable Indian nation, tribe or pueblo. The applicant may rent the residence, business, or agricultural enterprise that the applicant owns to another entity, however, the renter does not qualify for the tax credit.

D. Multiple different systems located at the same address are all eligible for the credit, provided the total amount awarded for all systems at the same address does not exceed the allocation limit in 3.3.14.15 NMAC; systems must meet eligibility requirements. The restriction in this paragraph applies even if the solar energy systems are separately metered.

E. A taxpayer who is not a dependent of another individual and who, on or after March 1, 2020, purchases and installs a solar thermal system or a photovoltaic system on a residence, business or agricultural enterprise in New Mexico owned by that taxpayer or on land held by a federally recognized Indian nation, tribe or pueblo and held in leasehold by that taxpayer, may apply for, and the department may allow, a credit against the taxpayer's tax liability imposed pursuant to the Income Tax Act. The tax credit provided by this section may be referred to as the "new solar market development income tax credit."

F. A taxpayer may apply for a new solar market development income tax credit certificate for the taxable year in which the taxpayer purchases and installs a solar thermal or photovoltaic system. To receive a new solar market development income tax credit certificate, a taxpayer shall apply to the department on forms and in the manner prescribed by the department within twelve months following the calendar year in which the system was installed.

G. The annual aggregate amount of credits that may be certified by the department as eligible is:

(1) in the calendar year 2024 and any subsequent year thereafter, thirty million dollars ($30,000,000); and

(2) For calendar years 2020 through 2023, where the calendar year limitation has previously been met in any one of those years, a total of twenty million dollars ($20,000,000).

Such supplemental state tax credits shall be claimed in taxable year 2023 regardless of whether the system was purchased and installed in calendar years 2020 through 2023. Applications for supplemental state tax credits certificates must be submitted on or before 12/31/2025.

H. When the aggregate amount of certificates issued reaches the cap in the foregoing paragraph, the department will no longer certify systems for that year. Applications received after the aggregate limit is reached shall not be approved and will be returned to applicant. The department shall keep a record of the order of receipt of all application packages to ensure the annual aggregate amount is not exceeded in any given year.

I. In the event of a discrepancy between a requirement of 3.3.14 NMAC and an existing New Mexico regulation and licensing department or New Mexico taxation and revenue department rule promulgated prior to 3.3.14 NMAC's adoption, the existing rule shall govern.
[3.3.14.8 NMAC - Rp, 3.3.14.8 NMAC, 7/16/2024]

3.3.14.9 APPLICATION:

A. To apply for a state tax credit an applicant shall submit an application for a certificate of eligibility to the division using either a department-developed application or an approved electronic application system as directed by the division director. The department will not accept paper applications or applications submitted by e-mail unless specifically authorized by the division. An applicant may obtain a state tax credit application form and system installation form from the division.

B. An application package shall include a completed state tax credit application form and written attachments for a solar thermal system or photovoltaic system. To be considered complete, an application must include the state tax credit application form and any required attachments; partial applications will not be accepted. An applicant shall submit one application package for each eligible solar energy system. After the department has certified a solar energy system, applicants may not amend the certified application package to seek additional credits for that system. If there are multiple owners of the property where the solar energy system is installed, a joint application must be submitted.

C. The application package shall meet the requirements of 3.3.14 NMAC. If an application package fails to meet a requirement, the department shall disapprove the application.

D. The completed application form shall consist of the following information:

(1) the applicant's name, mailing address, e-mail address, telephone number and the last four digits of the applicant's social security number or employer identification number (EIN) provided by a business or agricultural enterprise;

(2) the address where the solar energy system is located, if located at a residence, business or agricultural enterprise, or a location description if located at an agricultural enterprise;

(3) the solar energy system's type and description;

(4) the date the solar energy system was installed;

(5) if a contractor installed the solar energy system, the contractor's name, address, telephone number, e-mail address, license category and license number;

(6) acknowledgement the applicant installed the solar energy system, if applicable;

(7) the separately itemized net cost of equipment, materials, and labor of installing the solar energy system, excluding the expenses and income listed in 3.3.14 NMAC; and

(8) a statement the applicant signed and dated, which signature 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;

(b) applicant understands that there is annual aggregate cap on available state tax credits in place for solar energy systems and that they are eligible for a credit only in the year the system was installed, or, in the case of systems installed in 2020, 2021, 2022 and 2023, tax year 2023;

(c) applicant understands that the department must certify the solar energy system documented in the application package before becoming eligible for a state tax credit;

(d) applicant agrees to make any changes the department requires to the solar energy system for compliance with 3.3.14 NMAC; and

(e) to ensure compliance with 3.3.14 NMAC, applicant agrees to allow the department or its authorized representative to inspect the solar energy system described in the application package at any time after the date of submittal of the application package until three years after the department has certified the solar energy system, upon the department providing a minimum of five days' notice to the applicant.

E. An application package must contain the following information as attachments (the requirements in the subparagraph below depend on solar energy system location and whether application is seeking a state tax credit or a supplemental state tax credit):

(1) A completed application package for solar energy systems installed in years 2024 and after on private land shall remit the following attachments:

(a) A current property tax bill or other equivalent proof of ownership in the applicant's name for the residence, business, or agricultural enterprise where the solar energy system is installed. All names, partnerships and titles listed as property owners shall be listed on application;

(b) A Building Code Inspection report including the name of the building code authority, the permit number, and the date of successful inspection, either noted on a physical form, photo of inspection sticker, or a web-based report. The department prefers the permit for electrical inspection over the general building permit.

(c) An itemized invoice documenting the equipment, materials, and labor costs of the solar energy system, including but not limited to itemized accounting of permits, design, equipment, material, categorized fees, and installation labor of the solar energy system. For categorized fees please see Subsection C. of 3.3.14.14 NMAC; and

(d) The solar energy system's design schematic and technical specifications.

(2) The application package remitted for solar energy systems installed in years 2024 and after on lands of a federally recognized Indian nation, tribe or pueblo and held in leasehold by that taxpayer shall consist of the following information provided as attachments:

(a) A leasehold agreement, trust, allotment of property or other equivalent proof that the property where the solar system is installed is held on behalf of the individuals applying. All names, partnerships and titles listed as leaseholders shall be listed on application;

(b) For projects in areas subject to a building code authority's inspection: the permit number and issuance date, and date of successful inspection, if applicable, noted on a physical form, photo of inspection sticker, or a web-based report the applicable building code authority approves. For projects in areas not subject to a building code authority's inspection, a certification from a licensed New Mexico electrician that the solar energy system was properly integrated into the applicable structure's electrical system;

(c) An itemized invoice documenting the equipment, materials, and labor costs of the solar energy system, including but not limited to itemized accounting of permits, design, equipment, material, categorized fees, and installation labor of a solar energy system. For categorized fees please see Subsection C. of 3.3.14.14 NMAC; and

(d) The solar energy system's design schematic and technical specifications.

(3) The application package for a supplemental state tax credit for a project purchased and installed in years 2020 through 2023 shall consist of the following information provided as attachments:

(a) a current property tax bill or other equivalent proof of ownership in the applicant's name for the residence, business, or agricultural enterprise where the solar energy system is installed. All names, partnerships and titles listed as property owners shall be listed on application;

(b) for projects on tribal lands: a leasehold agreement, trust, allotment of property or other equivalent proof that the property where the solar system is installed is held on behalf of the individuals applying. All names, partnerships and titles listed as leaseholders shall be listed on application;

(c) the equipment, materials, and labor costs of a solar energy system the department certifies, documented in an itemized invoice. The invoice shall itemize the following costs including but not limited to permits, design, equipment, material, categorized fees, and installation labor of a solar energy system. The department may accept a purchase/installment agreement. For categorized fees please see Subsection C. of 3.3.14.14 NMAC. If an applicant cannot obtain an itemized invoice for a project installed in years 2020 through 2023, due to their contractor no longer being in business, the department may accept at its sole discretion evidence of project costs, such as evidence of total payments made and a certification that such payments did not include otherwise excluded costs under categorized fees please see Subsection C. of 3.3.14.14 NMAC; and

(d) for projects in areas subject to a building code authority's inspection: the permit number and issuance date, and date of successful inspection, if applicable, noted on a physical form, photo of inspection sticker, or a web-based report the applicable building code authority approves; and

(e) or projects in areas not subject to a building code authority's inspection, a certification from a licensed New Mexico electrician that the solar energy system was properly integrated into the applicable structure's electrical system.

(f) the solar energy system's design schematic and technical specifications.

(4) In addition to the requirements in the preceding paragraphs, if the application is for a solar thermal system, a completed solar thermal list form that includes the:

(a) manufacturer or supplier of system components and their model numbers;

(b) number of collectors;

(c) collector aperture dimensions;

(d) orientation of collectors by providing the azimuth angle from true south and tilt angle from horizontal;

(e) SRCC solar collector certification identification number; and

(f) manufacturer's specifications for collectors if collectors are unglazed;

(5) In addition to the requirements in the preceding paragraphs, if the application is for a photovoltaic system, a completed solar photovoltaic list form that includes the:

(a) manufacturer or supplier of major system components and their model numbers;

(b) number of modules;

(c) module rated direct current power output in watts under manufacturer's standard test conditions;

(d) collectors' orientation by providing the azimuth angle from true south and tilt angle from horizontal;

(e) total inverter capacity in kilowatts if an inverter is a part of the system;

(f) battery storage size and capacity in kilowatts and kilowatt-hours, if battery storage is a part of the system; and

(g) the building code authority's permit number and issuance date, and date of successful inspection, if applicable, noted on a physical form, photo of inspection sticker or a web-based report the applicable building code authority approves.

(6) Other information the department needs to evaluate the specific system type for certification.

[3.3.14.9 NMAC - Rp, 3.3.14.9 NMAC, 7/16/2024]

3.3.14.10 APPLICATION REVIEW PROCESS:

A. The department shall consider complete applications in the order received. If the department receives multiple applications on the same day that would cumulatively exceed the overall limit of state tax credit or supplemental state tax credit availability, the department shall certify the first application received for the last remaining tax credit.

B. The department shall review the application package to calculate the state tax credit or supplemental state tax credit; check the accuracy of the applicant's documentation; and determine whether the department shall certify the solar energy system. The department shall disapprove an application that is not complete, correct, or does not meet the approval criteria.

C. If the department finds the application package meets 3.3.14 NMAC's requirements and a state tax credit or supplemental state tax credit is available, the department shall certify the applicant's solar energy system and document the applicant as eligible for a state tax credit or supplemental state tax credit, as appropriate. A certificate issue for a system shall include the applicant's contact information, the last four digits of their social security number or EIN, system certification and the state tax credit amount. If a state tax credit or supplemental state tax credit is not available in the calendar year when the application was submitted, the department will notify the applicant that the program has reached the applicable aggregate tax credit certification cap and their application is not certified. The department provides notification of credit unavailability through written notification to the applicant.

D. The department shall report to the taxation and revenue department the information required to verify, process, and distribute each state tax credit or supplemental state tax credit by providing a copy of the department's certification notification.

E. The applicant may submit a revised application package to the department; however, the division shall place the resubmitted application in the review schedule as if it were a new application unless the application is disapproved because the annual cap has been reached.

F. If applicable, the department's disapproval letter shall state the reasons why the department disapproved the application. The applicant may resubmit the application package for a disapproved project, but it shall be reviewed as if it were a new application.

[3.3.14.10 NMAC - Rp, 3.3.14.10 NMAC, 7/16/2024]

3.3.14.11 SAFETY, CODES AND STANDARDS:

A. Solar energy systems that the department may certify shall meet the following 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.

B. Solar thermal systems that the department may certify shall meet the following requirements:

(1) design, permitting and installation in full compliance with all applicable provisions of the latest New Mexico Plumbing Code 14.8.2 NMAC, the New Mexico Mechanical

Codes 14.9.2 NMAC, Solar Energy Code 14.9.6 NMAC, the New Mexico General Construction Building Codes, 14.7.2 to 14.7.7 NMAC and any amendments to these codes adopted by a political subdivision that has validly exercised its planning and permitting authority under Sections 3-17-6 and 3-18-6 NMSA 1978.

C. Photovoltaic systems that the department may certify shall meet the following requirement for design, permitting and installation in full compliance with all applicable provisions of the latest New Mexico Electrical Code 14.10.4 NMAC and any amendments to these codes adopted by a political subdivision that has validly exercised its planning and permitting authority under Sections 3-17-6 and 3-18-6 NMSA 1978.

[3.3.14.11 NMAC - Rp, 3.3.14.11 NMAC, 7/16/2024]

3.3.14.12 MINIMUM SYSTEM SIZES, SYSTEM APPLICATIONS AND LISTS OF ELIGIBLE COMPONENTS:

A. Solar energy systems or their portions that the department may certify shall meet the following requirements:

(1) be primarily constituted by new equipment, components, and materials; except that the department may certify a system with recycled or reused components if the use of a used component would not adversely impact generation efficiency or overall system longevity and so long as it is not otherwise ineligible for certification;

(a) a system that is on a recreational vehicle, is mobile, does not serve a permanent end use energy load or is not permanently located in New Mexico;

(b) 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;

(c) a system or portion of a system having one or more components not manufactured on a regular basis by a business enterprise; and

(d) 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 state tax credit.

B. The department may disapprove a system type, solar thermal collector type, photovoltaic module type or a solar energy system component if not listed in 3.3.14 NMAC for certification.

C. Solar thermal systems that the department may certify include:

(1) the system applications of solar domestic hot water, solar space heating, solar air heating, solar process heating, solar space cooling or combinations of solar thermal system applications listed in 3.3.14 NMAC;

(2) the collector types of flat plate, parabolic trough, and evacuated tube; and

(3) the listed component categories of collectors, pumps, fans, solar storage tanks, expansion tanks, valves, controllers, and heat exchangers.

D. A solar thermal system component that the department may certify is a photovoltaic system providing power for a solar thermal system component's incidental electricity needs. The department shall not certify such a photovoltaic system as a separate solar energy system eligible for a separate state tax credit.

E. Solar thermal systems or their components that the department shall not certify are as follows:

(1) a heating system or heating system components necessary for a swimming pool or a hot tub;

(2) equipment sheds, wall preparation, cabinetry, site-built enclosures, distribution piping and associated installation costs;

(3) a building design element used for passive solar space heating, space cooling, daylighting, or other environmental comfort attribute;

(4) a water quality distillation or processing system;

(5) in a combined system, the portions of the system not allowed to receive a state tax credit or for which the department shall not certify the system;

(6) A system that does not comply with the latest version of the New Mexico Solar Code.

F. Solar thermal systems that the department may certify shall meet the following requirements:

(1) minimum system size of 15 square feet of solar collector aperture area;

(2) a collector that is listed as certified by the SRCC by OG-100 collector certification or OG-300 system certification processes; and

(3) all components approved by an agency accredited by the American national standards institute, if available for that specific component category.

G. Photovoltaic systems that the department may certify include:

(1) the system applications of direct power without battery storage, utility grid interconnected without battery storage, utility grid interconnected with without battery storage, stand-alone with battery storage, stand-alone with utility backup capability and water pumping;

(2) the flat plate module types of crystalline, poly-crystalline or thin-film amorphous silicon;

(3) the listed component categories of modules, inverters, batteries, manufactured battery enclosures, charge controllers, power point trackers, well pumps, racks, sun tracking mechanisms, performance monitoring equipment, communications, datalogging or lightning protection; and

(4) disconnect components, safety components, standard electrical materials, and standard electrical hardware necessary for the assembly of the listed component categories into a complete, safe, and fully operational system.

H. Photovoltaic systems that the department may certify shall meet the following requirements:

(1) a minimum total array power output of 100 watts direct current at manufacturer's standard test conditions;

(2) all components listed and labeled by a nationally recognized testing laboratory, if such listing is available for that specific component category; and

(3) an agricultural enterprise photovoltaic system on a farm or ranch that is not connected to an electric utility transmission or distribution system.

I. Photovoltaic systems or their portions that the department shall not certify are as follows:

(1) a commercial or industrial photovoltaic system that is not connected to an electric utility transmission or distribution system;

(2) power equipment sheds, wall preparation, cabinetry, site-built battery enclosures, distribution wiring and associated installation costs;

(3) the drilling, well casing, storage tanks, distribution piping, distribution controls and associated installation costs of a water pumping system; and

(4) a packaged product powered by photovoltaic cells that an applicant purchased directly from a retail business enterprise, is not custom designed, and does not require a permit from the building code authority for installation, including gate or door openers, watches, calculators, walkway lights, and toys.

[3.3.14.12 NMAC – Rp, 3.3.14.13 NMAC, 7/16/2024]

3.3.14.13 CERTIFICATION:

A. The purpose of the department's certification program is to evaluate certification of complete solar energy systems for state tax credit or supplemental state tax credit eligibility that are composed of components and materials that are tested, certified, approved or listed, as applicable, by other organizations identified or referenced in 3.3.14 NMAC.

B. If an applicant has received a state tax credit or a supplemental state tax credit for a solar energy system under this part, the solar energy system may not be used to meet the requirements for other tax credits available under state law:

(1) If the 2021 sustainable building tax credit application uses a solar energy system to achieve the energy reduction performance rating, and that solar energy system was previously certified for the state tax credit or the supplemental state tax credit, the department shall disapprove the application for that portion of a2021 sustainable building tax credit;

(2) if an onsite solar system is used to meet the 2021 sustainable building tax credit requirements of either the rating system certification level or the energy reduction requirement, the applicant may not claim a state tax credit or supplemental state tax credit under this part;

(3) a solar energy system may receive a state tax credit or supplemental state tax credit new installation certification only once; and

(4) in the case of an expansion to an existing solar energy system that previously received certification as a new installation, the department may approve a subsequent certification, but any credit issued shall cover only the costs of the expansion portion of the solar energy system.

C. If, after the department has issued a certification, any of these requirements are found to be insufficient, the department may rescind the certification.

[3.3.14.13 NMAC - Rp, 3.3.14.14 NMAC, 7/16/2024]

3.3.14.14 CALCULATING THE SOLAR ENERGY SYSTEM COST:

A. A state tax credit or supplemental state tax credit shall be based on the equipment, materials, labor, design fees, permitting inspection fees, design review stamp and interconnections costs of a solar energy system the department has certified. Self-installed systems shall be eligible for these costs, except that self-installers may not claim their own labor but may claim labor they hire.

B. The equipment, materials, and labor costs of a solar energy system the department certifies shall be documented in an itemized invoice. An invoice shall itemize the following costs which include but are not limited to: permits, design, equipment, material, categorized fees, and installation labor of a solar energy system.

C. The cost of a solar energy system the department certifies shall be the net cost of acquiring the system and 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 solar energy 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) membership fees;

(i) financing costs or loan interest;

(j) marketing, promotional or advertising costs;

(k) repair, operating or maintenance costs;

(l) warranty or extended warranty costs;

(m) system resale costs;

(n) system visual barrier costs;

(o) adjacent structure modification costs for building structures such as portals, garages, or pergolas to hold solar panels, or costs for modification or roof repair to hold solar panels;
(p) vegetation maintenance costs including tree trimming;
(q) contractor or inspector travel, mileage, or overnight hotel stays;
(r) recreational vehicle or hot tub ports;
(s) trenching exceeding 50 feet;
(t) donations to food banks on the applicant's behalf;
(u) system critter guard;
(v) non-descriptive miscellaneous items; and
(w) excess battery storage that is not consistent with industry standards;

(2) income, including:
(a) payments the solar energy system contractor or other parties provide or receive that reduce the system cost, including rebates, discounts, grants and refunds, except for federal tax credits;
(b) services, benefits, or material goods the solar energy system contractor or other parties provide by the same or separate contract, whether written or verbal.

D. The department shall make the final determination of the net cost of a solar energy system the department certifies pursuant to 3.3.14 NMAC.
[3.3.14.14 NMAC - Rp, 3.3.14.15 NMAC, 7/16/2024]

3.3.14.15 CALCULATING THE STATE TAX CREDIT OR SUPPLEMENTAL STATE TAX CREDIT:

A. A state tax credit or supplemental state tax credit to an applicant for a solar energy system the department has certified shall not exceed:
(1) up to ten percent of the purchase and installation costs of a solar thermal or photovoltaic system as provided in 3.3.14.14 NMAC; and
(2) six thousand dollars ($6,000) per taxpayer per taxable year.

B. The taxation and revenue department shall make the final determination of the amount of a state tax credit.
[3.3.14.15 NMAC – N, 7/16/2024]

3.3.14.16 CLAIMING THE STATE TAX CREDIT OR SUPPLEMENTAL STATE TAX CREDIT:

A. An applicant shall apply for the state tax credit or supplemental state tax credit with the taxation and revenue department and provide the department certification and any other information the taxation and revenue department requires within 12 months following the calendar year in which the system was installed.

B. An applicant claiming a state tax credit or supplemental state tax credit shall not claim a state tax credit pursuant to another law for costs related to the same solar energy system costs.
[3.3.14.16 NMAC – 7/16/2024]

3.3.14.17 INSPECTION OF SOLAR ENERGY SYSTEMS:

A. The only inspection required through this application process for certification of an applicant's solar energy system are an inspection by the applicable building code authority for building, electrical, or mechanical code compliance, as applicable to the solar energy system type, if applicable. An applicant should be aware that their electric utility company may require additional inspections for photovoltaic systems that are interconnected to the distribution grid of that electric utility company. The applicant is solely responsible for compliance with such requirements.

B. For purposes of monitoring compliance with 3.3.14 NMC, the department or its authorized representative shall have the authority to inspect a solar system owned by an applicant who has submitted an application for certification, upon the department providing five days' notice to the applicant."

[3.3.14.17 NMAC - Rp, 3.3.14.19 NMAC, 7/16/2024]

7-2-18.32. 2021 SUSTAINABLE BUILDING TAX CREDIT.

A. The tax credit provided by this section may be referred to as the "2021 sustainable building income tax credit". For taxable years ending prior to January 1, 2028, a taxpayer who is a building owner and files an income tax return may claim a 2021 sustainable building income tax credit if the requirements of this section are met. The 2021 sustainable building income tax credit shall be available for the construction in New Mexico of a sustainable building, the renovation of an existing building in New Mexico, the permanent installation of manufactured housing, regardless of where the housing is manufactured, that is a sustainable building or the installation of energy-conserving products to existing buildings in New Mexico, as provided in this section. The tax credit provided in this section may not be claimed with respect to the same sustainable building for which the 2021 sustainable building corporate income tax credit, the 2015 sustainable building income tax credit or the 2015 sustainable building corporate income tax credit has been claimed.

B. The amount of a 2021 sustainable building income tax credit shall be determined as follows:

(1) for the construction of a new sustainable commercial building that is broadband ready and electric vehicle ready and is completed on or after January 1, 2022, the amount of credit shall be calculated:

(a) based on the certification level the building has achieved in the rating level and the amount of qualified occupied square footage in the building, as indicated on the following chart:

Rating Level	Qualified Occupied Square Footage	Tax Credit per Square Foot
LEED-NC	Platinum First 10,000	$5.25
	Next 40,000	$2.25
	Over 50,000 Up to 200,000	$1.00
LEED-EB or CS Platinum	First 10,000	$3.40
	Next 40,000	$1.30
	Over 50,000 Up to 200,000	$0.35
LEED-CI Platinum	First 10,000	$1.50
	Next 40,000	$0.40
	Over 50,000 Up to 200,000	$0.30
LEED-NC Gold	First 10,000	$3.00
	Next 40,000	$1.00
	Over 50,000 Up to 200,000	$0.25
LEED-EB or -CS Gold	First 10,000	$2.00
	Next 40,000	$1.00
	Over 50,000 Up to 200,000	$0.25
LEED-CI	Gold First 10,000	$0.90
	Next 40,000	$0.40

	Over 50,000 Up to 200,000	$0.10; and

(b) with additional amounts based on the additional criteria and the amount of qualified occupied square footage, as indicated in the following chart:

Additional Criteria	Qualified Occupied Square Footage	Tax Credit per Square Foot
Fully Electric Building	First 50,000	$1.00
	Over 50,000 Up to 200,000	$0.50
Zero Carbon, Energy, Waste or Water Certified	First 50,000	$0.25
	Over 50,000 Up to 200,000	$0.10;

(2) for the renovation of a commercial building that was built at least ten years prior to the date of the renovation, has twenty thousand square feet or more of space in which temperature is controlled and is broadband ready and electric vehicle ready, the amount of credit shall be calculated by multiplying two dollars twenty-five cents ($2.25) by the amount of qualified occupied square footage in the building, up to a maximum of one hundred fifty thousand dollars ($150,000) per renovation; provided that the renovation reduces total energy and power costs by fifty percent when compared to the most current energy standard for buildings except low-rise residential buildings, as developed by the American society of heating, refrigerating and airconditioning engineers;

(3) for the installation of the following energy-conserving products to an existing commercial building with less than twenty thousand square feet of space in which temperature is controlled that is broadband ready, the amount of credit shall be based on the cost of the product installed, which shall include installation costs, and if the building is affordable housing, per product installed:

Product	Amount of Credit Affordable Housing	Non-Affordable Housing
Energy Star Air Source Heat Pump	$2,000	$1,000
Energy Star Ground Source Heat Pump	$2,000	$1,000
Energy Star Windows and Doors	100% of product cost up to $1,000	50% of product cost up to $500
Insulation Improvements That Meet Rules of the Energy, Minerals and Natural Resources Department	100% of product cost up to $2,000	50% of product cost up to $1,000
Energy Star Heat Pump Water Heater	$700	$350
Electric Vehicle Ready	100% of product	50% of product

cost up to $3,000 cost up to $1,500;

(4) for the construction of a new sustainable residential building that is broadband ready and electric vehicle ready and is completed on or after January 1, 2022, the amount of credit shall be calculated:

(a) based on the certification level the building has achieved in the rating level and the amount of qualified occupied square footage in the building, as indicated on the following chart:

Rating Level	Qualified Occupied Square Footage	Tax Credit per Square Foot
LEED-H Platinum	Up to 2,000	$5.50
LEED-H Gold	Up to 2,000	$3.80
Build Green Emerald	Up to 2,000	$5.50
Build Green Gold	Up to 2,000	$3.80
Manufactured Housing	Up to 2,000	$2.00; and

(b) with additional amounts based on the additional criteria and the amount of qualified occupied square footage, as indicated in the following chart:

Additional Criteria	Qualified Occupied Square Footage	Tax Credit per Square Foot
Fully Electric Building	Up to 2,000	$1.00
Zero Carbon, Energy, Waste or Water Certified	Up to 2,000	$0.25; and

(5) for the installation of the following energy-conserving products to an existing residential building, the amount of credit shall be based on the cost of the product installed, which shall include installation costs, and if the building is affordable housing or the taxpayer is a low-income taxpayer, per product installed:

Product	Amount of Credit	
	Affordable Housing and Low-Income	Non-Affordable Housing and Non-Low Income
Energy Star Air Source Heat Pump	$2,000	$1,000
Energy Star Ground Source Heat Pump	$2,000	$1,000
Energy Star Windows and Doors	100% of product cost $1,000	50% of product cost up to up to $500

Insulation Improvements That Meet Rules of the Energy, Minerals and Natural Resources Department	100% of product cost up to $2,000	50% of product cost up to $1,000
Energy Star Heat Pump Water Heater	$700	$350
Electric Vehicle Ready	$1,000	$500.

C. A person who is a building owner may apply for a certificate of eligibility for the 2021 sustainable building income tax credit from the energy, minerals and natural resources department on forms and in a manner prescribed by that department after the construction, installation or renovation of the sustainable building or installation of energy-conserving products in an existing building is complete. Completed 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 application is made meets the requirements of this section for a 2021 sustainable building income tax credit, the energy, minerals and natural resources department may issue a dated certificate of eligibility to the building owner, subject to the limitations in Subsection D 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, a calculation of the amount of 2021 sustainable building income tax credit for which the building owner is eligible, the identification number, date of issuance and the first taxable year that the credit shall be claimed. The energy, minerals and natural resources department may issue rules governing the procedure for administering the provisions of this subsection. 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.

D. Except as provided in Subsection E of this section, the energy, minerals and natural resources department may issue a certificate of eligibility only if the aggregate amount of 2021 sustainable building income tax credits represented by certificates of eligibility issued by the energy, minerals and natural resources department pursuant to this section and pursuant to Section 7-2A-28.1 NMSA 1978 shall not exceed in any calendar year an aggregate amount of:

(1) one million dollars ($1,000,000) with respect to the construction of new sustainable commercial buildings;

(2) two million dollars ($2,000,000) with respect to the construction of new sustainable residential buildings that are not manufactured housing;

(3) two hundred fifty thousand dollars ($250,000) with respect to the construction of new sustainable residential buildings that are manufactured housing;

(4) one million dollars ($1,000,000) with respect to the renovation of large commercial buildings; and

(5) two million nine hundred thousand dollars ($2,900,000) with respect to the installation of energy-conserving products in existing commercial buildings pursuant to Paragraph (3) of Subsection B of this section and existing residential buildings pursuant to Paragraph (5) of Subsection B of this section.

E. 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 Subsection D 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. The energy, minerals and natural resources department shall provide the department appropriate information for all certificates of eligibility in a secure manner on regular intervals agreed upon by both departments.

F. Installation of a solar thermal system or a photovoltaic system eligible for the new solar market development tax credit shall not be used as a component of qualification for the rating system certification level used in determining eligibility for the 2021 sustainable building income tax credit, unless a new solar market development tax credit has not been claimed with respect to that system and the building owner and the taxpayer claiming the 2021 sustainable building income tax credit certify that such a tax credit will not be claimed with respect to that system.

G. A taxpayer allowed a tax credit pursuant to this section shall claim the credit on forms and in a manner required by the department.

H. That portion of a 2021 sustainable building income tax credit approved by the department that exceeds the taxpayer's income tax liability for the taxable year in which the credit is claimed may be carried forward for up to seven consecutive taxable years; provided that if the taxpayer is a low-income taxpayer, the excess shall be refunded to the taxpayer. A certificate of eligibility for a 2021 sustainable building income tax credit may be sold, exchanged or otherwise transferred to another taxpayer for the full value of the credit. 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.

I. A taxpayer who otherwise qualifies and claims a 2021 sustainable building income 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.

J. Married individuals who file separate returns for a taxable year in which they could have filed a joint return may each claim only one-half of the 2021 sustainable building income tax credit that would have been allowed on a joint return.

K. The tax credit provided by this section shall be included in the tax expenditure budget pursuant to Section 7-1-84 NMSA 1978 with an analysis of the effectiveness and cost of the tax credit.

L. For the purposes of this section:

(1) "broadband ready" means a building with an internet connection capable of connecting to a broadband provider;

(2) "build green emerald" means the emerald level certification standard adopted by build green New Mexico, which includes water conservation standards and uses forty percent less energy than is required by the prescriptive path of the most current residential energy conservation code promulgated by the construction industries division of the regulation and licensing department;

(3) "build green gold" means the gold level certification standard adopted by build green New Mexico, which includes water conservation standards and uses thirty percent less energy than is required by the prescriptive path of the most current residential energy conservation code promulgated by the construction industries division of the regulation and licensing department;

(4) "building owner" means a person who holds fee simple interest in a

property or a person who holds a leasehold interest in land owned by a federally recognized Indian nation, tribe or pueblo;

(5) "electric vehicle ready" means a property that for commercial buildings provides at least ten percent of parking spaces and for residential buildings at least one parking space with one forty-ampere, two-hundredeight-volt or two-hundred-forty-volt dedicated branch circuit for servicing electric vehicles that terminates in a suitable termination point, such as a receptacle or junction box, and is located in reasonably close proximity to the proposed location of the parking spaces;

(6) "energy rating system index" means a numerical score given to a building where one hundred is equivalent to the 2006 international energy conservation code and zero is equivalent to a net-zero home. As used in this paragraph, "net-zero home" means an energy-efficient home where, on a source energy basis, the actual annual delivered energy is less than or equal to the on-site renewable exported energy;

(7) "Energy Star" means products and devices certified under the energy star program administered by the United States environmental protection agency and United States department of energy that meet the specified performance requirements at the installed locations;

(8) "fully electric building" means a building that uses a permanent supply of electricity as the source of energy for all space heating, water heating, including pools and spas, cooking appliances and clothes drying appliances and, in the case of a new building, has no natural gas or propane plumbing installed in the building or, in the case of an existing building, has no connected natural gas or propane plumbing;

(9) "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;

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

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

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

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

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

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

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

(17) "low-income taxpayer" means a taxpayer with an annual household adjusted gross income equal to or less than two hundred percent of the federal poverty level guidelines published by the United States department of health and human services;

(18) "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;

(19) "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;

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

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

(22) "sustainable commercial building" means:

(a) a commercial building that is certified as any LEED platinum or gold for commercial buildings;

(b) a multifamily dwelling unit that is certified as LEED-H platinum or gold or build green emerald or gold and uses at least thirty percent less energy than is required by the prescriptive path of the most current applicable energy conservation code promulgated by the construction industries division of the regulation and licensing department for build green gold or LEED-H, or uses at least forty percent less energy than is required by the prescriptive path of the most current residential energy conservation code promulgated by the construction industries division of the regulation and licensing department for build green emerald or LEED platinum; or

(c) a building that: 1) is certified at LEED-NC, LEED-EB, LEED-CS or LEED-CI platinum or gold levels; 2) achieves any prerequisite for and at least one point related to commissioning under the LEED energy and atmosphere category, if included in the applicable rating system; and 3) has reduced energy consumption beginning January 1, 2012 by forty 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;

(23) "sustainable residential building" means:

(a) a building used as a single-family residence that: 1) is certified as LEED-H platinum or gold or build green emerald or gold; 2) uses at least thirty percent less energy than is required by the prescriptive path of the most current residential energy conservation code promulgated by the construction industries division of the regulation and licensing department for build green gold or LEED-H, or uses at least forty percent less energy than is required by the prescriptive path of the most current residential energy conservation code promulgated by the construction industries division of the regulation and licensing department for build green emerald or LEED platinum; 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;

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

(25) "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;

(26) "zero carbon certified" means a building that is certified as LEED zero carbon by achieving a carbon-dioxide-equivalent balance of zero for the building;

(27) "zero energy certified" means a building that is certified as LEED zero energy by achieving a source energy use balance of zero for the building;

(28) "zero waste certified" means a building that is certified as LEED zero waste by achieving green building certification incorporated's true zero waste certification at the platinum level; and

(29) "zero water certified" means a building that is certified as LEED zero water by achieving a potable water use balance of zero for the building.

(Laws 2025, Chapter 130, Section 45)

3.3.35.7 DEFINITIONS:
For additional definitions refer to Sections 7-2-18.32 NMSA 1978.

A. “Annual cap” means the annual total amount of the 2021 sustainable building tax credit available to taxpayers owning sustainable buildings.

B. “Applicant” means a taxpayer who owns a sustainable residential or commercial building or manufactured housing or who has renovated an existing building or installed energy-conserving products in New Mexico and who desires to have the department issue a certificate of eligibility for a 2021 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 2021 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. “Building project” means a new construction of a sustainable commercial or residential building, installation of manufactured housing, renovation of an existing building or installation of energy conserving products to existing 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 specific physical address for the approved 2021 sustainable building tax credit, the rating system certification level awarded to the building, the amount of qualified occupied square footage, a calculation of the maximum amount of the 2021 sustainable building tax credit for which the owner would be eligible, the date of issuance and the first taxable year the credit shall be claimed.

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

(1) LEED-H gold or build green New Mexico gold;
(2) LEED-H platinum or build green New Mexico emerald;
(3) LEED-NC gold;
(4) LEED-NC platinum;
(5) LEED-EB (O&M) or LEED-CS gold;
(6) LEED-EB (O&M) or LEED-CS platinum;
(7) LEED-CI gold or LEED-CI platinum; and
(8) manufactured housing.

J. “Code official” means the officer or other designated authority charged with the administration and enforcement of the building codes.

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

L. “Division director” means the director of the department’s energy conservation and management division.

M. “Insulation” is a material that contains properties to significantly control heat flow caused by radiation, convection and conduction. It is essential for controlling heat gain and loss through the building enclosure. Insulation is rated by R-value, the material’s resistance to heat flow.

N. “Install” or “installation” means the direct work of placing an energy conservation product into service to operate and reduce energy at the expected level for window, doors and insulation and contribute to electrification of commercial and residential buildings with energy star rated equipment.

O. “LEED certification” means the verification by the United States green building council, or a department-approved verifier, that a building project has met certain prerequisites and performance benchmarks or credits within the applicable LEED rating system resulting in the issuance of a certification document.

P. “LEED registration” means the notification to the United States green building council that a project is pursuing LEED certification.

Q. “Most current” means the most recent date of the latest approved edition of a standard LEED rating system or the most recent date of an approved energy code adopted by the construction industries division of the regulation and licensing department.

R. “O&M” means operation and maintenance.

S. “2021 sustainable building tax credit” for the purposes of 3.3.35 NMAC means the personal income tax credit the state of New Mexico issues to an applicant for a sustainable residential or commercial building, manufactured home, renovation of an existing building or installation of energy-conserving products.

T. “New solar market development income tax credit” means the personal income tax credit enacted in 2020 issued to a taxpayer for a solar energy system the department has certified.

U. “Notice of approval” means the work complies in all respects with the latest building codes and has been approved by the code official.

V. “Project completion” means notice of approval by code officials for construction or renovation projects. New buildings must be completed after January 1, 2022. Renovation of existing buildings or installation of energy-conserving products must be completed after January 1, 2021.

W. “Rating system” means the LEED rating systems previously defined, 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. “Sustainable affordable buildings” means housing that serves the needs of low-income persons with an annual household adjusted gross income equal to or less than two hundred percent of the federal poverty level guidelines published by the United States department of health and human services.

Z. “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.

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

BB. “Taxpayer” means any individual subject to the tax imposed by the Income Tax Act, 7-2-1 *et seq*. NMSA 1978.

CC. “Taxpayer identification number” means the taxpayer’s nine-digit social security number or employer identification number provided by a business enterprise.

DD. “Verifier” means an entity the department approves to provide certifications under the build green New Mexico or LEED rating systems.

[3.3.35.7 NMAC - Rp, 3.3.35.7 NMAC, 07/12/2022]

3.3.35.8 GENERAL PROVISIONS:

A. The 2021 sustainable building tax credit may be claimed for taxable years prior to January 1, 2028.

B. A tax credit provided in 3.3.35.8 NMAC may not be claimed with respect to the same sustainable building under the 2021 sustainable building tax credit provided in the Corporate Income and Franchise Tax Act, for which a credit under the 2015 sustainable building tax credit pursuant to the Income Tax Act or the Corporate Income and Franchise Tax Act has already been claimed.

C. A person who is the owner of a building in New Mexico constructed to be a sustainable building or permanently installed manufactured housing and receives certification on or after January 1, 2022, may receive a certificate of eligibility for a 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.

D. A person who is the owner of a commercial building having more than 20,000 square feet of temperature-controlled space and was built at least 10 years prior to the renovation or a building owner who has installed energy conservation products in an existing commercial or residential building having less than 20,000 square feet of temperature-controlled space on or after January 1, 2021, may receive a certificate of eligibility for a 2021 sustainable building tax credit.

E. The annual total amounts in a calendar year of the 2021 sustainable building tax credit pursuant to the Income Tax Act and Corporate Income and Franchise Tax Act available to taxpayers owning sustainable residential buildings is $2,000,000, for sustainable commercial buildings is $1,000,000 and for sustainable manufactured housing is $250,000. Any excess funds not used in a taxable year shall not be carried forward to subsequent years. When the cap is reached in any category in a given year based on all certificates of eligibility the department has issued, the department shall:

(1) if part of the eligible 2021 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 in a subsequent tax year, except for the last taxable year when the 2021 sustainable building tax credit is in effect;

(2) issue certificates of eligibility to applicants who meet the requirements for the 2021 sustainable building tax credit in a taxable year when applications in one sustainable building category exceed the annual cap in another sustainable building category and other categories are under the annual cap as determined by February 1 of any year in which the tax credit is in effect; or

(3) if no 2021 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 2021 sustainable building tax credit is in effect.

F. Funding for renovation of commercial buildings is $1,000,000 and for energy conservation products $2,900,000.

G. In the event of a discrepancy between a requirement of 3.3.35 NMAC and an existing New Mexico taxation and revenue department rule promulgated before 3.3.35 NMAC's adoption, the existing rule governs.

H. All notices 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.

I. New Mexico general requirements.

(1) Sustainable buildings shall have the internet connections capable of

connecting to a broadband provider.

(2) New sustainable residential buildings shall be electric vehicle ready. The parking space shall be equipped with one 40 ampere, 208 volt or 240 volt dedicated branch circuit for charging electric vehicles. The termination point can be a receptacle or junction box and shall be near where electric vehicles can easily be charged. The extension cord shall be long enough to reach to a vehicle and meet electric code and electric vehicle manufacturing requirements.

(3) New sustainable commercial buildings shall be electric vehicle ready with at least ten percent of the parking spaces capable of charging electric vehicles and for residential buildings at least one parking space. All parking spaces required to be capable of charging electric vehicles shall be equipped with one 40 ampere, 208 volt or 240 volt dedicated branch circuit for charging electric vehicles. The termination point can be a receptacle or junction box and shall be near where electric vehicles can easily be charged. The extension cord shall be long enough to reach to a vehicle and meet electric code and electric vehicle manufacturing requirements.

(4) A fully electric new building shall have a permanent supply of only electricity for space heating, water heating, cooking appliances, clothes washing, clothes drying, dish washing, pools and spas. No natural gas or propane plumbing shall be installed. This is only required to obtain the 2021 sustainable building tax credit for fully electric new buildings.

(5) A fully electric existing building shall have a permanent supply of only electricity for space heating, water heating, cooking appliances, clothes washing, clothes drying, pools and spas. The existing building shall not be connected to natural gas or propane energy supplies. Existing natural gas or propane plumbing does not need to be removed for purpose of this provision, so long as it is disconnected. This is only required to obtain the 2021 sustainable building tax credit for fully electric new buildings.

(6) Sustainable building projects shall follow the latest LEED rating system requirements as established by the United States green building council or the latest build green New Mexico requirements.

J. Build green New Mexico sustainable single-family residential requirements.

(1) Build green emerald shall:

(a) comply with watersense standards for indoor plumbing fixtures and water using appliances that, on average, have flow rates equal to or lower than the flow rates required for certification;

(b) include one waterline in the front and one waterline in the back, below the frost line, that can be connected to a drip irrigation system if landscaping area is available; and

(c) use forty percent less energy than is required by following the prescriptive path of the most current residential energy conservation code adopted by the construction industries division of the regulation and licensing department.

(2) Build green gold shall:

(a) comply with watersense standards for indoor plumbing fixtures and water using appliances that, on average, have flow rates equal to or lower than the flow rates required for certification;

(b) include one waterline in the front and one waterline in the back, below the frost line, that can be connected to a drip irrigation system if landscaping area is available; and

(c) use thirty percent less energy than is required by following the prescriptive path of the most current residential energy conservation code adopted by the construction industries division of the regulation and licensing department.

(3) Build green New Mexico shall use department approved verifiers to determine 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.

K. Net zero homes shall be determined using an energy rating system index that gives a numerical score to a building where 100 represents the energy use of a home relative to the 2006 International Energy Conservation Code and 0 is equivalent to a net zero home.
[3.3.35.8 NMAC - Rp, 3.3.35.8 NMAC, 07/12/2022]

3.3.35.9 VERIFIER ELIGIBILITY FOR ALL BUILDINGS:

A. The department reviews the qualifications for verifiers of the build green New Mexico or LEED-H certifications or LEED commercial buildings, which shall be provided annually to the department, based on the following criteria:

(1) the verifier is independent from the homebuilders or homeowners or commercial building owners that may apply for certification;

(2) the verifier has adequate staff and expertise to provide certification services, including:

(a) experience in green home building and commercial 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 any changes to its certification process or rating systems on which its prior approval by the department was based.

D. The department may rescind an existing verifier's approval at any time if it determines the above criteria are not being met.

E. The department notifies the verifier of the reasons for disapproving or rescinding eligibility as follows.

(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 the department should not rescind the verifier's approval. The director shall consider the request. The division director may hold, at his or her discretion, a hearing and appoint a hearing officer to conduct the hearing. The division director shall send a final decision to the verifier on the later of 20 calendar days after receiving the request or five calendar days after a 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, at his or her sole discretion, and appoint a hearing officer to conduct the hearing. The secretary shall send a final decision to the verifier within the latter of 20

calendar days after receiving the request or five calendar days after the date the hearing concludes.
[3.3.35.9 NMAC – Rp, 3.3.35.9 NMAC, 07/12/2022]

3.3.35.10 APPLICATION FOR THE 2021 SUSTAINABLE BUILDING TAX CREDIT:

A. To obtain the 2021 sustainable building tax credit, a taxpayer shall apply for a certificate of eligibility with the department using either a department-developed application form or approved electronic application system as directed by the division director. An applicant may obtain the department-developed application form or access to the electronic application system from the department.

B. An application package shall include a completed application form and attachments as specified on the application form or by the electronic application system. The applicant shall submit the application form and required attachments at the same time. An applicant shall submit one application package for each sustainable residential or commercial building or manufactured house. An applicant for a multiuse building shall submit one residential application and one commercial application. The applicant shall submit all material in the application package on 8½ inch by 11-inch paper or using any approved electronic application system provided by the department as directed by the division director. If the applicant fails to submit the application form and required attachments at the same time as directed by the division director, the department may consider the application incomplete.

C. An applicant shall submit a complete sustainable building application package to the department no later than February 1 of the taxable year for which the applicant seeks the 2021 sustainable building tax credit. If an applicant does not submit a complete application package by February 1, any remaining funds in any other sustainable building category in the 2021 sustainable building tax credit funds, under the cap, may be used in that taxable year for completed 2021 sustainable building 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 commercial or residential building or manufactured housing, or the address where the renovations were done including the applicable 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 or commercial building for projects eligible under LEED or build green New Mexico and for renovations of commercial buildings built at least ten years prior to the renovation and having at least 20,000 square feet;

(7) the rating system under which the sustainable residential or commercial building was certified for projects eligible under LEED or build green New Mexico;

(8) the certification level achieved, if applicable;

(9) the energy rating system index, if applicable;

(10) documentation applicant meets water efficiency standards to comply with water efficiency requirements of LEED and build green New Mexico programs;

(11) the date of rating system certification, if applicable;

(12) project completion date;

(13) if applicable, the low-income taxpayer declaration confirming an

applicant's annual household adjusted gross income is equal to or less than two hundred percent of the federal poverty level guidelines published by the United States department of health and human services;

(a) the annual update of the poverty guideline of the United States department of health and human services as published in the federal register shall be the basis for determining eligibility;

(b) the taxable year prior to the calendar year in which the energy-conserving products were purchased and installed shall be used to determine eligibility of the low-income taxpayer;

(14) if applicable, a statement from the building owner that the occupants of the commercial or residential building are low-income persons as defined in Paragraph (13) of Subsection D of 3.3.35.10 NMAC;

(15) a statement signed and dated by the applicant, which may be a form of electronic signature if approved by the department, certifying:

(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 3.3.35 NMAC;

(c) if an onsite solar system is used to meet the requirements of either the rating system certification level applied for in the 2021 sustainable building tax credit or the energy reduction requirement achieved, the applicant did not claim a new solar market development income tax credit and will not do so;

(d) applicant understands there are annual caps for the 2021 sustainable building tax credit;

(e) applicant understands the department must verify the documentation submitted in the application package before the department issues a certificate of eligibility for a 2021 sustainable building tax credit; and

(f) energy conservation products installed on or after January 1, 2021, may be certified for the 2021 sustainable building tax credit.

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 building;

(2) a copy of the rating system certification form;

(3) a copy of the final certification review checklist showing the points achieved, if applicable;

(4) a copy of the energy rating index system certificate from an approved rating network or an equivalent rating system to the home energy rating system developed by RESNET showing the building has achieved the energy reduction requirements for build green New Mexico gold and emerald energy reduction levels;

(5) documentation showing compliance with the thirty and forty percent reduction requirements including:

(a) an analysis establishing the energy per square foot per year level that complies with the prescriptive path of the latest adopted residential energy code; the energy level established by meeting the energy code shall be compared to the energy consumption level of the final sustainable residential constructed design to demonstrate that the building consumes forty percent less energy or thirty percent less energy depending on the certification requested; and

(b) renewables can be used to meet the forty or thirty percent energy requirements if calculation results show the annual energy contribution of renewables, in consistent units, of energy per square foot per year demonstrate the forty or thirty percent requirement is met; results from the national renewable energy laboratory PV calculator or equivalent evaluation systems shall be used to determine the annual energy output of photovoltaic systems;

(6) documentation showing a renovation of a commercial building having 20,000 square feet or more reduces total energy and power costs by fifty percent when compared to the most current energy standard for buildings titled energy standard for buildings except low-rise residential buildings, as developed by the american society of heating, refrigerating and air-conditioning engineers;

(7) documentation showing project completion date; and

(8) a copy of a notice of approval such as a certificate of occupancy from the building official for the renovation of a commercial building showing it was built at least 10 years prior to the project completion date.

F. The applicant shall provide the following attachments, as applicable;

(1) fully electric building certification;

(2) electric vehicle ready certification;

(3) broadband ready certification; and

(4) any other information the department determines it needs to review the building project for the 2021 sustainable building tax credit.

[3.3.35.10 NMAC – Rp, 3.3.35.10 NMAC, 07/12/2022]

3.3.35.11 APPLICATIONS FOR ENERGY-CONSERVING PRODUCTS:

A. Energy-conserving products shall be energy star rated for the location installed and meet the insulation requirements in 3.3.35.14 NMAC to be eligible for the 2021 sustainable building tax credit.

B. Energy-conserving products installed under the 2021 sustainable building tax credit shall reduce the energy consumption of a residential or commercial building with energy star windows and doors and insulation or contribute towards electrification of sustainable buildings with energy star heat pump furnaces and water heaters.

C. To obtain the 2021 sustainable building tax credit, a taxpayer shall apply for a certificate of eligibility with the department using either a department-developed application form or approved electronic application system as directed by the division director. An applicant may obtain the department-developed application form or access to the electronic application system from the department.

D. An application package shall include a completed application form and attachments as specified on the application form or by the electronic application system. The applicant shall submit the application form and required attachments at the same time. An applicant shall submit one application package for each project. The applicant shall submit all material in the application package on 8½ inch by 11-inch paper or using any approved electronic application system provided by the department as directed by the division director. If the applicant fails to submit the application form and required attachments as directed by the division director, the department may consider the application incomplete.

E. An applicant shall submit a complete application package to the department no later than February 1 of the year following the taxable year for which the applicant seeks the 2021 sustainable building tax credit. An applicant may submit an application for energy-conserving products installed in 2021 after February 1, 2022. The department may review application packages it receives after that date for the subsequent calendar year if the tax credit remains in effect.

F. The completed application form shall consist of the following information:

(1) the applicant’s name, mailing address, telephone number, email address and taxpayer identification number;

(2) the name of the applicant’s authorized representative, if any;

(3) the ending date of the applicant's taxable year;

(4) the address of the building where the energy-conserving products have been installed, including the property's legal description;

(5) if applicable, a low-income taxpayer declaration confirming annual household adjusted gross income equal to or less than two hundred percent of the federal poverty level guidelines published by the United States department of health and human services;

(a) the annual update of the poverty guideline of the United States department of health and human services as published in the federal register shall be the bases for determining eligibility;

(b) the taxable year prior to the calendar year in which the energy-conserving products were purchased and installed shall be used to determine eligibility of the low-income taxpayer;

(6) if applicable, a statement from the building owner certifying the occupants of the commercial or residential building are low-income persons and low-income persons, as defined in Paragraph (5) of Subsection F of 3.3.35.11 NMAC, continue to reside in the building;

(7) a statement signed and dated by the applicant, which may be a form of electronic signature if approved by the department, certifying:

(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 3.3.35 NMAC;

(c) applicant understands there are annual caps for the 2021 sustainable building tax credit;

(d) applicant understands the department must verify the documentation submitted in the application package before the department issues a certificate of eligibility for a 2021 sustainable building tax credit; and

(e) applicant understands the department issues a certificate of eligibility for the taxable year in which the energy-conserving products were installed; or if the 2021 sustainable building tax credit's annual cap has been reached, for the next taxable year in which funds are available;

(8) a statement verifying when the installation was complete; and

(9) a statement verifying that the application is for an affordable or non-affordable commercial or residential sustainable building tax credit.

G. The following attachments are required for applications for installation of energy star equipment:

(1) equipment specification sheet showing complete model number and copy of energy star certification for specific model of installed items;

(2) documentation that energy star certification is for the climate zone where the unit is installed;

(3) itemized invoice showing the quantity of product, cost of the energy-conserving product and cost for installation incurred within the tax year for which the application is submitted;

(4) proof of inspection and approval of installation; if applicable; and

(5) a copy of a deed, property tax bill or legal description of the building.

H. The following attachments are required for applications for installation of insulation:

(1) material specification sheet showing the R-value or U-value of insulation;

(2) material flame spread index and smoke development index specifications;

(3) a certification provided by the contractor showing the installed thickness

of insulation following the manufacturer's installation instructions for blown-in or sprayed-on insulation;

(4) itemized invoice showing quantity, product and installation costs of the insulation project;

(5) proof of inspection and approval of installation; if applicable and

(6) a copy of a deed, property tax bill or legal description of the building.

I. The following attachments are required for electric vehicle ready equipment:

(1) a specification sheet for the electric vehicle charging unit; and

(2) a one-line diagram showing the ampere and voltage rating of the dedicated branch circuit for each charging unit.

J. In addition to the foregoing, the applicant shall submit any other information the department determines it needs to review the building project for the 2021 sustainable building tax credit.

K. If the requirements established by the department have been complied with, the department shall issue to the building owner a document granting a 2021 sustainable building tax credit with an identification number, date of issuance, a calculation of the maximum amount of the 2021 sustainable building tax credit for which the building owner would be eligible and the first taxable year the credit shall be claimed.

L. To ensure compliance with 3.3.35 NMAC applicant agrees to allow the department or its authorized representative to inspect the energy conservation product installation described in the application package at any time after the date of submittal of the application package until three years after the department has certified the energy conservation product installation, upon the department providing a minimum of five days' notice to the applicant.
[3.3.35.11 NMAC – N, 07/12/2022]

3.3.35.12 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. The department disapproves an incomplete or incorrect 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 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 2021 sustainable building tax credit, check accuracy of the applicant's documentation and determine whether the department issues a certificate of eligibility for the 2021sustainable building tax credit.

D. If an applicant has claimed a new solar market development income tax credit that solar system cannot be used to meet the requirements of either the certification level applied for, or the energy reduction achieved. If an applicant has received a new solar market development tax income credit for a system is used to meet the requirements of the certification level applied for or the energy reduction achieved, the department shall disapprove the application for the 2021 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 the application package meets the requirements and a 2021 sustainable building tax credit is available, the department issues the certificate of eligibility for a 2021 sustainable building tax credit as provided in 3.3.35.8 NMAC. 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, a calculation of the maximum amount of 2021 sustainable building tax credit for which the owner would be eligible, date of issuance and the first and any subsequent taxable year(s) the credit shall be claimed.

F. If the department finds the application package for energy conservation products meets the requirements and a 2021 sustainable building tax credit is available, the department issues the certificate of eligibility for a 2021 sustainable building tax credit as provided in 3.3.35.8 NMAC. The notification shall include the taxpayer's contact information, taxpayer identification number, certificate of eligibility number or numbers, energy-conserving product certified, a calculation of the maximum amount of 2021 sustainable building tax credit for which the owner would be eligible, date of issuance and the first and any subsequent taxable year(s) the credit shall be claimed.

G. The certificate shall state the energy conservation product that is certified and that the certificate is for an affordable or non-affordable sustainable building project.
[3.3.35.12 NMAC - Rp, 3.3.35.11 NMAC, 07/12/2022]

3.3.35.13 CALCULATING THE TAX CREDIT FOR THE 2021 SUSTAINABLE BUILDING TAX CREDIT:

A. The department calculates the maximum 2021 sustainable building tax credit 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.

Sustainable commercial building that is broadband ready and electric vehicle ready and is completed after January 1, 2022:	
LEED-NC platinum first 10,000 square feet	equals the qualified square footage up to 10,000 multiplied by $5.25
LEED-NC platinum next 40,000 square feet	equals the qualified square footage greater than 10,000 up to 40,000 multiplied by $2.25
LEED-NC platinum over 50,000 up to 200,000 square feet	equals the qualified square footage greater than 50,000 up to 200,000 multiplied by $1.00
LEED-EB (O&M) or CS platinum first 10,000 square feet	equals the qualified square footage up to 10,000 multiplied by $3.40
LEED-EB (O&M) or CS platinum next 40,000 square feet	equals the qualified square footage greater than 10,000 up to 40,000 multiplied by $1.30
LEED-EB (O&M) or CS platinum over 50,000 up to 200,000 square feet	equals the qualified square footage greater than 50,000 up to 200,000 multiplied by $0.35
LEED-CI platinum first 10,000 square feet	equals the qualified square footage up to 10,000 multiplied by $1.50
LEED-CI platinum next 40,000 square feet	equals the qualified square footage greater than 10,000 up to 40,000 multiplied by $0.40
LEED-CI platinum over 50,000 up to 200,000 square feet	equals the qualified square footage greater than 50,000 up to 200,000 multiplied by $0.30
LEED-NC gold first 10,000 square feet	equals the qualified square footage up to 10,000 multiplied by $3.00

LEED-NC gold next 40,000 square feet	equals the qualified square footage greater than 10,000 up to 40,000 multiplied by $1.00
LEED-NC gold over 50,000 up to 200,000 square feet	equals the qualified square footage greater than 50,000 up to 200,000 multiplied by $0.25
LEED-EB (O&M) or CS gold first 10,000 square feet	equals the qualified square footage up to 10,000 multiplied by $2.00
LEED-EB (O&M) or CS gold next 40,000 square feet	equals the qualified square footage greater than 10,000 up to 40,000 multiplied by $1.00
LEED-EB (O&M) or CS gold over 50,000 up to 200,000 square feet	equals the qualified square footage greater than 50,000 up to 200,000 multiplied by $0.25
LEED-CI gold first 10,000 square feet	equals the qualified square footage up to 10,000 multiplied by $0.90
LEED-CI gold next 40,000 square feet	equals the qualified square footage greater than 10,000 up to 40,000 multiplied by $0.40
LEED-CI gold over 50,000 up to 200,000 square feet	equals the qualified square footage greater than 50,000 up to 200,000 multiplied by $0.10
Additional criteria	
fully electric buildings first 50,000 square feet	equals the qualified square footage up to 50,000 multiplied by $1.00
fully electric buildings over 50,000 up to 200,000 square feet	equals the qualified square footage greater than 50,000 up to 200,000 multiplied by $0.50
zero carbon, energy, waste or water certified first 50,000 square feet	equals the qualified square footage up to 50,000 multiplied by $0.25
zero carbon, energy, waste or water certified over 50,000 square feet up to 200,000 square feet	equals the qualified square footage greater than 50,000 up to 200,000 multiplied by $0.10
Renovation of commercial building at least 10 years old with at least 20,000 square feet of qualified occupied square footage in which temperature is controlled and is broadband and electric vehicle ready effective January 1, 2021:	
renovation that reduces total energy consumption by 50% when compared to the most current energy standard for buildings except low-rise residential buildings as developed by American society of heating, refrigerating and air-conditioning engineers	equals qualified square footage multiplied by $2.25 up to a maximum of $150,000 per renovation

For the installation of these energy conserving products for renovation of sustainable affordable and non-affordable commercial buildings less than 20,000 square feet of space in which temperature is controlled and is broadband ready effective January 1, 2021:		
Product	affordable housing	non-affordable housing

energy star air source heat pump	$2,000 including product and installation costs and associated electrical connection costs	$1,000 including product and installation costs and associated electrical connection costs
energy star ground source heat pump	$2,000 including product and installation costs and associated electrical connection costs	$1,000 including product and installation costs per product installed and associated electrical connection costs
energy star windows and doors	one hundred percent of product and installation costs up to $1,000	fifty percent of product and installation costs up to $500 per product installed
insulation improvements that meet department's rules	one hundred percent of product and installation costs up to $2,000	fifty percent of product and installation costs up to $1,000 per product installed
energy star heat pump water heater	$700 including product and installation costs and associated electrical connection costs	$350 including product and installation costs per product installed and associated electrical connection costs
electric vehicle ready	one hundred percent of product and installation costs up to $3,000 and associated electrical connection costs	fifty percent of product and installation costs up to $1,500 per product installed and associated electrical connection costs

For construction of a new sustainable residential building that is broadband ready and electric vehicle ready and completed after January 1, 2022:	
LEED-H platinum	equals the qualified square footage up to 2,000 multiplied by $5.50
LEED-H gold	equals the qualified square footage up to 2,000 multiplied by $3.80
build green emerald	equals the qualified square footage up to 2,000 multiplied by $5.50
build green gold	equals the qualified square footage up to 2,000 multiplied by $3.80
manufactured housing	equals the qualified square footage up to 2,000 multiplied by $2.00
Additional criteria	
fully electric building	equals the qualified square footage up to 2,000 multiplied by $1.00
zero carbon, energy, waste or water certified	equals the qualified square footage up to 2,000 multiplied by $0.25

For installation of energy conserving products for renovation of affordable and non-affordable existing residential buildings effective January 1, 2021:		
Product	affordable housing and low income	non-affordable housing and non-low income
energy star air source heat pump	$2,000 including product and installation costs (per product installed if the applicant is a low-income taxpayer)	$1,000 including product and installation costs per product installed

energy star ground source heat pump	$2,000 including product and installation costs (per product installed if the applicant is a low-income taxpayer)	$1,000 including product and installation costs per product installed
energy star windows and doors	one hundred percent of product and installation costs up to $1,000 (per product installed if the applicant is a low-income taxpayer)	fifty percent of product and installation costs up to $500 per product installed
insulation improvements that meet department's rules	one hundred percent of product and installation costs up to $2,000 (per product installed if the applicant is a low-income taxpayer)	fifty percent of product and installation costs up to $1,000 per product installed
energy star heat pump water heaters	$700 including product and installation costs (per product installed if the applicant is a low-income taxpayer)	$350 including product and installation costs per product installed
electric vehicle ready	$1,000 including product and installation costs (per product installed if the applicant is a low-income taxpayer)	$500 including product and installations costs per product installed

B. Energy conservation products shall meet the specified energy star rating performance requirements at the installed location.

energy star zones for New Mexico	
south-central zone	Chavez, Dona Ana, Eddy, Hidalgo, Lea, Luna and Otero counties
north-central zone	Bernalillo, Cibola, Curry, De Baca, Grant, Guadalupe, Lincoln, Quay, Roosevelt, Sierra, Socorro, Union and Valencia counties
northern	Catron, Colfax, Harding, Los Alamos, McKinley, Mora, Rio Arriba, San Juan, San Miguel, Sandoval, Santa Fe, Taos and Torrance counties

[3.3.35.13 NMAC - Rp, 3.3.35.13 NMAC, 07/12/2022]

3.3.35.14 REQUIREMENTS FOR ENERGY CONSERVING PRODUCTS:

A. Energy-conserving products shall be energy star rated for the location installed and meet the insulation requirements in 3.3.35.14 NMAC to be eligible for the 2021 sustainable building tax credit. Energy conserving products and insulation improvements eligible for the 2021 sustainable building tax credit shall meet the applicable requirements of the most current New Mexico commercial building code, the New Mexico residential building code, the New Mexico electrical code, the New Mexico mechanical code and the New Mexico plumbing code and shall be installed under a construction permit and shall be inspected by the code official having jurisdiction.

B. Insulation products and installation eligible for consideration for a tax credit are

(1) batts and blankets made of mineral fiber and mineral wool such as fiberglass, rock, slag, wool, cotton or cellulose materials; they are available with facings that serve as vapor retarders and without facings; some products have flanges to aid in installation to

framed assemblies;

(2) loose-fill insulation that uses a blown installation process for cellulose, fiberglass, mineral wool and natural wools; the R-value of the blown wall insulation material installed in closed cavities is determined by the installed thickness and density; the installed density shall meet manufactured specifications; open horizontal applications, such as for attic and floors, the R-value is verified by thickness and rated coverage; in open vertical applications the R-value shall be thickness and rated coverage as per manufacture specifications;

(3) spray polyurethane foam having an open cellular structure having a nominal density of 0.4 to 1.5 pounds per cubic foot shall have a minimum R-value of 3.6 per inch for compliance; a spray applied polyurethane foam having a closed cellular structure having a nominal density of 1.5 to less than 2.5 pounds per cubic foot shall have a minimum R-value of 5.8 per inch for compliance; the weatherproof seal placed on top of spray polyurethane foam shall protect from degradation caused by ultraviolet light, water and other normal weathering hazards; surfaces to receive the roof covering system must comply with applicable building codes and manufacturers installation recommendations;

(4) rigid insulation sheathing made from fiberglass, mineral wool, expanded polystyrene, extruded polystyrene, polyisocyanurate or polyurethane; this type of insulation may be used for roof decks, exterior walls, ceilings, basement walls, perimeter insulation or to cover window and door headers; fastening shall follow manufacturer requirements;

(5) wet insulation systems are roofing systems where insulation is installed above the waterproof membrane of a roof; installation shall meet New Mexico building code water sealing requirements;

(6) structural form wall systems made of closed cell spray foam placed in the cavity bonded to wood framing and continuous rigid board insulation on the exterior of the frame;

(7) structural insulated panels that are non-framed advanced construction system that consists of ridged foam insulation sandwiched between two sheets of board; the insulation can be expanded polystyrene foam, extruded polystyrene foam, polyurethane or polyisocyanurate foam; and

(8) insulated concrete forms (ICF) that are a system of formwork for concrete that stays in place as permanent building insulation and can be used for cast-in-place reinforced above-and below-grade concrete walls, floors and roofs; they are interlocking modular units that can be dry stacked (without mortar) and filled with concrete as a single concrete masonry unit; ICFs lock together externally and have internal metal or plastic ties to hold the outer layers of insulation to create a concrete form.

C. Eligible insulation installations shall to the extent possible, without structural framing modification, be installed in the building cavity to the R-factor listed in the prescriptive method of the latest New Mexico energy conservation code adopted by the construction industries division of the regulation and licensing department for the applicable building cavity and construction site climate zone. In no instance shall an increase in insulating R-factor less than 10 be considered for the 2021 sustainable building tax credit. Reframing involving basic structural framing of a building is not required.

D. Mandatory requirements for insulation products.

(1) R-value identification marks shall be applied by the manufacturer to each piece of insulation 12 inches or wider. Alternatively, the insulation installer shall provide a certification listing the type, manufacturer and R-value of the insulation install in each element of the building thermal envelope.

(2) For blown in or sprayed fiberglass and cellulose insulation, the initial installed thickness, settled thickness, settled R value, installed density, coverage area and number of bags installed shall be listed on the certification.

(3) For sprayed polyurethane foam insulation, the installed thickness shall be listed on the certification. The thickness of sprayed insulation shall be marked in inches and

markers showing the thickness shall be installed every 300 square feet and attached to trusses or joists in attics. The numbers in the markers shall be at least one inch high and visible from the attic access opening.

(4) Fire rating of products shall follow the New Mexico commercial building code and New Mexico residential code.

(5) Foam plastic insulation shall be tested to demonstrate a flame-spread index of not more than 75 and a smoke-developed index of not more than 450.

(6) Exposed facing on insulation materials shall be fire resistant and tested and certified not to exceed a flame spread index of 25 and a smoke development index of 450. These indexes shall be shown on the insulation or packaging material or supplied by the manufacturer.

(7) Exposed foundation insulation shall have a protective rigid, opaque and weather-resistant protective covering to prevent the degradation of the insulation.

(8) Slab insulation must be suitable for applications in direct contact with soil and have a water absorption rate less than 0.3 percent when tested and a vapor permeance not greater than 2.0 perm/inch when tested.

(9) All insulation shall be properly sealed to prevent air leakage.

(10) To qualify for the 2021 sustainable building tax credit, insulation products installed shall meet the most current New Mexico energy code insulation requirements adopted by the construction industries division of the regulation and licensing department.

E. Retrofits with the following construction material or methods are not eligible for the 2021 sustainable building tax credit:

(1) logs, strawbales, adobe and rammed earth;

(2) spray-in-place polyurethane foam for interior walls or ceilings;

(3) urea formaldehyde foam insulation; and

(4) passive solar technologies using direct gain, trombe walls or mass energy storage.

F. The following are mandatory requirements for fenestration products.

(1) Fenestration products shall meet energy star requirements.

(2) The temporary label on windows shall not be removed until after inspection by the code official.

(3) All fenestration products shall be properly sealed to prevent air leakage.

G. Windows and skylights.

(1) Windows are considered part of an exterior wall when the slope is 60 degrees or more as measured from the horizontal. Where the slope of the fenestration is less than 60 degrees, the glazing is considered a skylight. Skylights are not eligible for the 2021 sustainable building tax credit.

(2) Site built fenestration or field-fabricated fenestration are not eligible for the 2021 sustainable building tax credit.

H. To qualify for an electric vehicle ready 2021 sustainable building tax credit, a commercial building shall have at least ten percent of parking spaces and for residential buildings at least one parking space with one 40 ampere, 208 volt or 240 volt dedicated branch circuit for charging electric vehicles. The termination point can be a receptacle or junction box and shall be near where electric vehicles can easily be charged. The extension cord shall be long enough to reach a vehicle and meet code and electric vehicle manufacturing requirements.

[3.3.35.14 NMAC - N, 07/12/2022]

3.3.35.15 CLAIMING THE STATE TAX CREDIT:

To claim the 2021 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 may require.
[3.3.35.15 NMAC – Rp, 3.3.35.14 NMAC, 07/12/2022]

7-2-18.33. CREDIT; NURSES; 2022 TAXABLE YEAR.

A. For taxable year 2022, a taxpayer who is not a dependent of another individual and who was employed full time as a nurse at a hospital located in New Mexico may apply for, and the department may allow, a tax credit against the taxpayer's tax liability pursuant to the Income Tax Act pursuant to the provisions of this section.

B. The amount of tax credit allowed pursuant to this section shall be in an amount equal to one thousand dollars ($1,000).

C. To receive a tax credit provided by this section, a taxpayer shall apply to the department on forms and in the manner prescribed by the department. The application shall include a certification by the hospital for which the taxpayer was employed in 2022 that the taxpayer was employed full time throughout 2022 as a nurse by the hospital.

D. That portion of the tax credit that exceeds a taxpayer's tax liability in the taxable year in which the credit is claimed shall be refunded to the taxpayer.

E. A taxpayer allowed a tax credit pursuant to this section shall report the amount of the credit to the taxation and revenue department in a manner required by that department.

F. The department shall compile an annual report on the tax credit provided by this section 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.

G. As used in this section:

(1) "full time" means working at least thirty hours per week for forty-four weeks per year;

(2) "hospital" means a facility licensed as a hospital by the department of health; and

(3) "nurse" means a person licensed as a registered nurse or licensed practical nurse pursuant to the Nursing Practice Act.

(Laws 2022, Chapter 47, Section 3)

7-2-18.34. CHILD INCOME TAX CREDIT.

A. For taxable years prior to January 1, 2032, a taxpayer who is a resident and is not a dependent of another individual may apply for, and the department may allow, a credit against the taxpayer's tax liability imposed pursuant to the Income Tax Act for each qualifying child of the taxpayer. The tax credit provided by this section may be referred to as the "child income tax credit".

B. Except as provided in Subsection D of this section, the child income tax credit may be claimed as shown in the following table:

Adjusted gross income is Over	But not over	Amount of credit per qualifying child is
$ 0	$25,000	$600
25,000	50,000	400
50,000	75,000	200
75,000	100,000	100
100,000	200,000	75
200,000	350,000	50
350,000		25.

C. If a taxpayer's adjusted gross income is less than zero, the taxpayer may claim a tax credit in the amount shown in the first row of the table provided in Subsection B of this section.

D. For the 2024 taxable year and each subsequent taxable year, the amount of credit shown in the table in Subsection B of this section shall be adjusted to account for inflation. The department shall make the adjustment by multiplying each amount of credit by a fraction, the numerator of which is the consumer price index ending during the prior taxable year and the denominator of which is the consumer price index ending in tax year 2022. The result of the multiplication shall be rounded down to the nearest one dollar ($1.00), except that if the result would be an amount less than the corresponding amount for the preceding taxable year, then no adjustment shall be made.

E. To receive a child income tax credit, a taxpayer shall apply to the department on forms and in the manner prescribed by the department.

F. That portion of a child income tax credit that exceeds a taxpayer's tax liability in the taxable year in which the credit is claimed shall be refunded.

G. Married individuals filing separate returns for a taxable year for which they could have filed a joint return may each claim only one-half of the child income tax credit that would have been claimed on a joint return.

H. 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.

I. The department shall compile an annual report on the child 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 compile and present the annual report to the revenue stabilization and tax policy committee and the legislative finance committee with an analysis of the cost of the tax credit.

J. As used in this section:

(1) "consumer price index" means the consumer price index for all urban consumers published by the United States department of labor for the month ending September 30; and

(2) "qualifying child" means "qualifying child" as defined by Section 152(c) of the Internal Revenue Code, as that section may be amended or renumbered, but includes any minor child or stepchild of the taxpayer who
would be a qualifying child for federal income tax purposes if the public assistance contributing to the support of the child or stepchild was considered to have been contributed by the taxpayer.
(Laws 2023, Chapter 211, Section 9)

7-2-18.35. HOME FIRE RECOVERY INCOME TAX CREDIT.

A. A taxpayer who is not a dependent of another individual and who, beginning on May 15, 2024 and prior to January 1, 2030, incurs qualified home expenditures for a home in New Mexico to replace a prior home of the taxpayer that was destroyed by a wildfire in calendar years 2021 through 2023 may claim a tax credit against the taxpayer's tax liability imposed pursuant to the Income Tax Act in an amount equal to the qualified home expenditures incurred by the taxpayer not to exceed fifty thousand dollars ($50,000) per home. The tax credit provided by this section may be referred to as the "home fire recovery income tax credit".

B. A taxpayer who seeks to claim the tax credit shall apply for certification of eligibility from the construction industries division of the regulation and licensing department on forms and in a manner prescribed by that division. The aggregate amount of credits that may be certified as eligible in any calendar year is five million dollars ($5,000,000). An application for certification shall be made no later than twelve months after the calendar year in which construction of the home is completed. Completed applications shall be considered in the order received. If a taxpayer submits an application for the tax credit and the aggregate amount of certifications has been met for the calendar year, the application shall be placed at the front of a queue for certification in a subsequent calendar year. Except as otherwise provided in Subsections G and H of this section, only one tax credit shall be certified per taxpayer.

C. An application for certification of eligibility shall include:

(1) proof that the taxpayer's prior home was destroyed by wildfire in calendar years 2021 through 2023, including a sworn statement by the taxpayer;

(2) proof that the taxpayer incurred expenditures for the construction of a home on the same property of the taxpayer's prior, wildfire-destroyed home, including a contract with a builder or manufacturer;

(3) a sworn statement by the taxpayer and the builder or manufacturer of the home that the construction of the home has been completed and stating the date of its completion; and

(4) any additional information the construction industries division of the regulation and licensing department may require to determine eligibility for the tax credit.

D. If the construction industries division of the regulation and licensing department determines that the taxpayer meets the requirements of this section, the division shall issue a dated certificate of eligibility to the taxpayer providing the amount of tax credit for which the taxpayer is eligible and the taxable year in which the credit may be claimed. The construction industries division shall provide the department with the certificates of eligibility issued pursuant to this subsection in a secure electronic format at regularly agreed-upon intervals.

E. A taxpayer issued a certificate of eligibility shall claim the tax credit on forms and in a manner required by the department within twelve months of being issued the certificate of eligibility.

F. That portion of the tax credit that exceeds a taxpayer's tax liability in the taxable year in which the tax credit is claimed shall not be refunded but may be carried forward for a maximum of three consecutive taxable years.

G. Married individuals filing separate returns for a taxable year for which they could have filed a joint return may each claim only one-half of the tax credit that would have been claimed on a joint return.

H. A taxpayer may be allocated the right to claim the tax credit in proportion to the taxpayer's ownership interest if the taxpayer owns an interest in a business entity that is taxed for federal income tax purposes as a partnership or limited liability company and that business entity has met all of the requirements to be eligible for the credit. The total credit claimed by all members of the partnership or limited liability company shall not exceed the allowable credit pursuant to this section.

I. The tax credit provided by this section shall be included in the tax expenditure budget pursuant to Section 7-1-84 NMSA 1978, including the annual aggregate cost of the tax credit.

J. As used in this section:

(1) "home" means a dwelling designed for long-term habitation in which the taxpayer resides for a majority of the year and is:

(a) constructed permanently on a taxpayer's property with a foundation and that cannot be moved; or

(b) a manufactured home or modular home that is a single-family dwelling with a heated area of at least thirty-six by twenty-four feet and at least eight hundred sixty-four square feet and 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 the Uniform Building Code, as amended to the date of the unit's construction, and installed consistent with the Manufactured Housing Act and with the rules made pursuant thereto relating to permanent foundations; and

(2) "qualified home expenditures" means gross expenditures for the construction or manufacture of a home on the same property in New Mexico that a taxpayer's prior home was destroyed by a wildfire in calendar years 2021 through 2023, less any compensation related to home construction, manufacture or repair costs received pursuant to the federal Hermit's Peak/Calf Canyon Fire Assistance Act or from insurance or other source of compensation.

(Laws 2025, Chapter 130, Section 46)

7-2-18.36. CLEAN CAR INCOME TAX CREDIT. (REPEALED EFFECTIVE JANUARY 1, 2031)

A. A taxpayer who is not a dependent of another individual and who, beginning on the effective date of this section and prior to January 1, 2030, purchases an electric vehicle, plug-in hybrid electric vehicle or fuel cell vehicle or enters into a new lease of at least three years for one of these vehicles may claim a tax credit against the taxpayer's tax liability imposed pursuant to the Income Tax Act in an amount provided in Subsection B of this section. The tax credit provided by this section may be referred to as the "clean car income tax credit".

B. The amount of the tax credit shall be in an amount equal to:

(1) for taxable years beginning January 1, 2024 and prior to January 1, 2027:

(a) three thousand dollars ($3,000) for a new electric vehicle;

(b) two thousand five hundred dollars ($2,500) for a new plug-in hybrid electric vehicle or fuel cell vehicle;

(c) two thousand five hundred dollars ($2,500) for a previously owned electric vehicle; and

(d) two thousand dollars ($2,000) for a previously owned plug-in hybrid electric vehicle or fuel cell vehicle;

(2) for a taxable year beginning January 1, 2027 and prior to January 1, 2028:

(a) two thousand two hundred twenty dollars ($2,220) for a new electric vehicle;

(b) one thousand eight hundred fifty dollars ($1,850) for a new plug-in hybrid electric vehicle or fuel cell vehicle;

(c) one thousand eight hundred fifty dollars ($1,850) for a previously owned electric vehicle; and

(d) one thousand four hundred eighty dollars ($1,480) for a previously owned plug-in hybrid electric vehicle or fuel cell vehicle;

(3) for a taxable year beginning on January 1, 2028 and prior to January 1, 2029:

(a) one thousand four hundred seventy dollars ($1,470) for a new electric vehicle;

(b) one thousand two hundred twenty-five dollars ($1,225) for a new plug-in hybrid electric vehicle or fuel cell vehicle;

(c) one thousand two hundred twenty-five dollars ($1,225) for a previously owned electric vehicle; and

(d) nine hundred eighty dollars ($980) for a previously owned plug-in hybrid electric vehicle or fuel cell vehicle; and

(4) for the taxable year beginning January 1, 2029:

(a) nine hundred sixty dollars ($960) for a new electric vehicle;

(b) eight hundred dollars ($800) for a new plug-in hybrid electric vehicle or fuel cell vehicle;

(c) eight hundred dollars ($800) for a previously owned electric vehicle; and

(d) six hundred forty dollars ($640) for a previously owned plug-in hybrid electric vehicle or fuel cell vehicle.

C. For a previously owned motor vehicle to be eligible for the tax credit, the vehicle shall have a model year that is at least two years prior to the calendar year in which the taxpayer purchased or leased the vehicle.

D. A taxpayer shall apply for certification of eligibility for the tax credit from the energy, minerals and natural resources department on forms and in the manner prescribed by that department. Except as provided in Subsections I and J of this section, only one tax credit shall be certified per taxpayer per taxable year, and only one tax credit shall be certified per previously owned motor vehicle. The energy, minerals and natural resources department may promulgate rules governing the procedure for administering the provisions of this subsection.

E. An application for certification of eligibility shall include proof of vehicle purchase from or lease through a dealer licensed by the motor vehicle division of the department pursuant to Section 66-4-2 NMSA 1978 or a dealer located on tribal land within New Mexico, the vehicle's registration or application for title and registration in New Mexico and any additional information the energy, minerals and natural resources department may require to determine eligibility for the credit. If the energy, minerals and natural resources department determines that the taxpayer meets the requirements of this section, that department shall issue a dated certificate of eligibility to the taxpayer providing the amount of tax credit for which the taxpayer is eligible and the taxable years in which the credit may be claimed. The energy, minerals and natural resources department shall provide the department with the certificates of eligibility issued pursuant to this subsection in an electronic format at regularly agreed upon intervals.

F. Applications for certification of the tax credit shall be made no later than one year from the date on which the vehicle is purchased or the lease is entered into.

G. A certificate of eligibility for the tax credit may be sold, exchanged or otherwise transferred to another taxpayer for the full value of the credit. 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 in an electronic format prescribed by the department.

H. That portion of the tax credit claimed by a taxpayer that exceeds the taxpayer's income tax liability in the taxable year in which a clean car income tax credit is claimed shall be refunded to the taxpayer.

I. Married individuals filing separate returns for a taxable year for which they could have filed a joint return may each claim only one-half of the tax credit that would have been claimed on a joint return.

J. A taxpayer may be allocated the right to claim the tax credit in proportion to the taxpayer's ownership interest if the taxpayer owns an interest in a business entity that is taxed for federal income tax purposes as a
partnership or limited liability company and that business entity has met all of the requirements to be eligible for the credit. The total credit claimed by all members of the partnership or limited liability company shall not exceed the allowable credit pursuant to this section.

K. A taxpayer allowed to claim the tax credit shall claim the tax credit in a manner required by the department. The credit shall be claimed within three taxable years of the end of the year in which the energy, minerals and natural resources department certifies the credit.

L. As used in this section:

(1) "electric vehicle" means a motor vehicle that derives all of the vehicle's power from electricity stored in a battery that:

(a) has a capacity of not less than twenty-five kilowatt-hours;

(b) is capable of powering the vehicle for a range of at least one hundred miles; and

(c) is capable of being recharged from an external source of electricity;

(2) "fuel cell vehicle" means a motor vehicle that:

(a) uses a fuel cell to produce electricity that is used to drive an electric motor; and

(b) is capable of powering the vehicle for a range of at least one hundred miles;

(3) "motor vehicle" means a vehicle with four wheels that:

(a) is required under the Motor Vehicle Code to be registered in this state and that is registered in this state;

(b) is made by a manufacturer;

(c) is manufactured primarily for use on public streets, roads or highways;

(d) has not been modified from the original manufacturer specifications;

(e) is rated at not less than two thousand two hundred pounds unloaded base weight and not more than nine thousand seven hundred fifty pounds unloaded base weight;

(f) has a maximum speed capability of at least sixty-five miles per hour; and

(g) is purchased from or leased through a dealer licensed by the motor vehicle division of the department pursuant to Section 66-4-2 NMSA 1978 or a dealer located on tribal land within New Mexico;

(4) "new" means a motor vehicle that has a base manufacturer suggested retail price, before options and destination charges and before any taxes are imposed, of fifty-five thousand dollars ($55,000) or less;

(5) "plug-in hybrid electric vehicle" means a motor vehicle that derives part of the vehicle's power from electricity stored in a battery that:

(a) has a capacity of not less than six kilowatt-hours;

(b) is capable of powering a vehicle for a range of at least thirty miles; and

(c) is capable of being recharged from an external source of electricity;

(6) "previously owned" means a motor vehicle that is not new, that has a market value of twenty-five thousand dollars ($25,000) or less, that is certified by the dealer selling the motor vehicle and for which the dealer provides at least a one-year extended manufacturer's warranty against defects and repairs; and

(7) "tribal land" means all land owned by a tribe and located within the exterior boundaries of the tribe's reservation or grant and all land held by the United States in trust for the tribe.

(Laws 2024, Chapter 67, Section 27; Applicable to taxable years beginning on or after January 1, 2024)

3.3.36.7 DEFINITIONS:

For additional definitions refer to Section 7-2-18.36 NMSA 1978.

A. "Applicant" means a New Mexico taxpayer that has purchased an electric vehicle, plug-in hybrid electric vehicle or fuel cell vehicle or enters into a new lease of at least three years for one of these vehicles.

B. "Application package" means the application documents an applicant submits to the department for certification to receive a state tax credit.

C. "Certified" or "certification" means department approval of an applicant's eligible purchase of an electric vehicle, plug-in hybrid electric vehicle or fuel cell vehicle, or an applicant's new lease of at least three years for one of these vehicles, either of which makes the applicant owning or leasing the vehicle eligible for a state tax credit.

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

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

F. "Extended warranty" means a dealership-provided one-year extended warranty against defects and repairs on a previously owned vehicle.

G. "Licensed dealer" means a dealer licensed by the motor vehicle division of the taxation revenue department pursuant to Section 66-4-2 NMSA 1978 or a dealer located on tribal land within New Mexico.

H. "New lease" means when a taxpayer enters into a new lease agreement of at least three years for a clean car vehicle.

I. "State tax credit" or "tax credit" means the clean car personal income tax credit.

[3.3.36.7 NMAC - N, 09/24/2024]

3.3.36.8 - GENERAL PROVISIONS:

A. The state tax credit may be claimed for taxable years after January 1, 2024, and prior to January 1, 2030.

B. The tax credit provided by this section may be referred to as the clean car personal income tax credit.

C. One tax credit may be certified per taxpayer, per taxable year; only one tax credit shall be certified per new motor vehicle, and only one tax credit shall be certified per previously owned motor vehicle.

D. A taxpayer who is not a dependent of another individual and who, beginning on May 15, 2024, and prior to January 1, 2030, purchases an electric vehicle, plug-in hybrid electric vehicle, fuel cell vehicle or enters a new lease of at least three years for one of these vehicles is eligible to apply for certification for the tax credit against the taxpayer's tax liability imposed pursuant to the Income Tax Act.

E. If a New Mexico taxpayer owns an interest in a business entity that is taxed for federal income tax purposes as a partnership or limited liability company and that business entity has met all the requirements to be eligible for the credit, that taxpayer may be allocated the right to claim the tax credit in proportion to the taxpayer's ownership interest.

F. The total credit claimed by all members of the partnership or limited liability company shall not exceed the allowable credit the department has certified.

G. The state tax credit is available for the tax year in which the vehicle was purchased or leased. The tax year of vehicle purchase date determines tax year eligibility.

H. Married individuals filing separate returns for a taxable year for which they could have filed a joint return may each claim only one-half of the tax credit that would have been claimed on a joint return.

I. A vehicle purchase or lease must be through a motor vehicle dealer licensed by the New Mexico motor vehicle division. A vehicle purchased through an unlicensed dealer is not eligible for the clean car personal income tax credit.

J. A lessee of a vehicle must have entered into a new lease for at least three years.

K. A previously owned motor vehicle must have a minimum one-year extended warranty against defects and repairs.

L. The department shall report to the taxation and revenue department the information required to verify, process, and distribute each state tax credit.

M. In the event of a discrepancy between a requirement of 3.3.36 NMAC and an existing New Mexico taxation and revenue department rule promulgated prior to the adoption of 3.3.36 NMAC, the existing rule shall govern.

[3.3.36.8 NMAC - N, 09/24/2024]

3.3.36.9 TAX CREDIT ADMINISTRATION:

A. A taxpayer may apply for certification for a clean car personal income tax credit from the energy, minerals, and natural resources department on electronic forms and in the manner prescribed by that department. The department will not accept paper applications or applications submitted by e-mail unless specifically authorized by the division.

B. An application package for a new clean car or previously owned clean car shall include a completed state tax credit electronic application and all required attachments. Partial applications will not be accepted. After the department has certified an application, applicants may not amend the certified application package to seek additional credits for that vehicle. If there are multiple owners on a clean car vehicle registration, a joint application must be submitted.

C. If the energy, minerals, and natural resources department determines that the taxpayer meets the clean car tax credit requirements, the department shall issue a certificate of eligibility to the taxpayer providing the amount of tax credit and the taxable year in which the credit may be claimed.

[3.3.36.9 NMAC – N, 09/24/2024]

3.3.36.10 APPLICATION REQUIREMENTS:

A. The state tax credit is available for purchases of an electric vehicle, plug-in hybrid electric vehicle or fuel cell vehicle, or new leases of at least three years for one of these vehicles.

B. Applications for certification of the state tax credit shall be made no later than one year from the date on which the vehicle is purchased or the lease is entered into.

C. The application package shall meet the requirements of 3.3.36 NMAC. If an application package fails to meet a requirement, the department shall disapprove the application.

[3.3.36.10 NMAC - N, 09/24/2024]

3.3.36.11 APPLICATION:

A. To apply for a state tax credit, an applicant shall submit an application for a certificate of eligibility to the division using a department-developed application or an approved electronic application system.

B. To be considered complete, an application must include the state tax credit application and all required attachments.

C. If there are multiple owners of the clean car, a joint application must be submitted.

D. A completed application shall consist of the following information:

(1) The applicant's name, mailing address, e-mail address, telephone number, vehicle identification number (VIN) and the last four digits of the applicant's social security number or employer identification number (EIN) provided by a business applicant.

(2) A detailed description of the clean car, including year, make and model.

(3) A statement the applicant signed and dated, which signature may be a form of electronic signature if approved by the department, agreeing that all information provided in the application package is true and correct to the best of the applicant's knowledge.

(4) The vehicle's weight, battery capacity, and VIN as listed on the vehicle's window sticker.

E. A statement the applicant signed and dated, which may be a form of electronic signature if approved by the department, agreeing:

(1) applicant has read the certification requirements contained in 3.3.36 NMAC;

(2) applicant understands that the department must certify the clean car documents in the application package before becoming eligible for a state tax credit.
[3.3.36.11 NMAC – N, 09/24/2024]

3.3.36.12 APPLICATION ATTACHMENTS:

A. An application for new vehicle shall contain the following information as attachments:

(1) Purchase agreement, vehicle proof of purchase from or proof of new lease through a dealer licensed by the motor vehicle division of the department pursuant to Section 66-4-2 NMSA 1978 or a dealer located on tribal land within New Mexico;

(2) the vehicle's registration in New Mexico;

(3) vehicle purchase sticker or vehicle specification sheet;

(4) any additional information the energy, minerals, and natural resources department may require determining eligibility for the credit.

B. An application for previously owned motor vehicle certification of eligibility shall include:

(1) proof of vehicle purchase from or lease through a dealer licensed by the motor vehicle division of the department pursuant to Section 66-4-2 NMSA 1978 or a dealer located on tribal land within New Mexico;

(2) the vehicle's registration in New Mexico;

(3) vehicle purchase sticker or vehicle specification sheet;

(4) proof that the dealer provided at least a one-year extended warranty against defects and repairs for the previously owned vehicle;

(5) any additional information the energy, minerals and natural resources department may require in determining eligibility for the credit.
[3.3.36.12 NMAC - N, 09/24/2024]

3.3.36.13 APPLICATION REVIEW PROCESS:

A. The department shall consider complete applications in the order received.

B. The department shall review the application package to calculate the state tax credit; check the accuracy of the applicant's documentation and determine whether the department shall certify the clean car personal income tax credit. The department shall disapprove an application that is not complete, correct, or does not meet the approval criteria.

C. If the department finds the application package meets the requirements of 3.3.36 NMAC, and a state tax credit is available, the department shall certify the applicant's clean car personal income tax credit.

D. If applicable, the department's disapproval notification shall state the reasons why the department disapproved the application. The applicant may resubmit the electronic application package for a disapproved project, but it shall be placed back at the beginning of the queue and reviewed as if it were a new application.
[3.3.36.13 NMAC - N, 09/24/2024]

3.3.36.14 WARRANTIES AND LEASES:

A. Clean car tax credit warranties that the department may accept for previously owned motor vehicles shall be provided by the dealer and shall cover a minimum of one-year extended warranty against defects and repairs.

(1) Auto warranties accepted by the department must cover both the failed part and the labor to replace or repair it. The warranty types that the department may accept include the following:

(a) an auto warranty that covers repairs for parts that fail due to defects or errors in how a vehicle was built;

(b) a bumper-to-bumper warranty, which may also be called a comprehensive or limited warranty, that covers nearly all a vehicle's systems;

(c) a certified pre-owned warranty that carries the balance of the original bumper-to-bumper and powertrain warranties;

(d) an extended warranty that covers a vehicle's problems after the original new vehicle warranty expires and which covers mechanical breakdowns and electrical failures;

(e) extended length warranty;

(f) factory warranty;

(g) new vehicle warranty;

(h) manufacturer warranty;

(i) any other warranty deemed eligible by the department.

(2) The warranty types that the department will not accept include the following:

(a) aftermarket accessories warranty;

(b) a basic used warranty for a car "as is," or for a period less than a year;

(c) corrosion and perforation warranties;

(d) emissions system warranty;

(e) hybrid and electric car battery warranties. The department will not accept a warranty covering *only* the high-voltage batteries installed in hybrids, plug-in hybrids and battery-electric vehicles;

(f) implied warranty;

(g) powertrain warranty. The department will not accept a warranty covering *only* the engine, transmission, and drivetrain components, even if it includes coverage of components in drive systems for electric vehicles and gas-electric hybrids;

(h) replacement parts warranty;

(i) restraint system warranty. The department will not accept a warranty covering *only* a vehicle's seat belts or restraint stem;

(j) roadside assistance warranty;

(k) tire warranty;

(l) any other warranty deemed ineligible by the department.

B. The following new lease agreement types that the department will accept include the following:

(1) closed-end lease where the applicant agrees to lease the car from a licensed dealer for a set term and certain mileage limits, and then return it at the end of the leasing period.

(2) open-end lease where the terms are flexible, and the applicant takes the depreciation risk of the vehicle.

(3) single payment lease where the applicant pays the entire amount for the lease upfront.

(4) long-term lease.

(5) used vehicle lease if it is longer than three years.

(6) any other type of lease deemed eligible by the department.

C. The lease agreement types that the department will not accept include the following:

(1) sub-vented or subsidized lease. The department will not accept a lease type that is offered with special incentives to make it more enticing to consumers. These incentives can include lower base interest rates, higher residual values, and manufacturer discounts

(2) A lease shorter than three years.

[3.3.36.14 NMAC - N, 09/24/2024]

3.3.36.15 CALCULATING THE STATE TAX CREDIT:

A. The amount of the tax credit shall be:

(1) for taxable years beginning January 1, 2024, and prior to January 1, 2027:

(a) $3,000 for a new electric vehicle.

(b) $2,500 for a new plug-in hybrid electric vehicle or fuel cell vehicle.

(c) $2,500 for a previously owned electric vehicle.

(d) $2,000 for a previously owned plug-in hybrid electric vehicle or fuel cell vehicle.

(2) for a taxable year beginning January 1, 2027, and prior to January 1, 2028:

(a) $2,220 for a new electric vehicle.

(b) $1,850 for a new plug-in hybrid electric vehicle or fuel cell vehicle.

(c) $1,850 for a previously owned electric vehicle.

(d) $1,480 for a previously owned plug-in hybrid electric vehicle or fuel cell vehicle.

(3) for a taxable year beginning on January 1, 2028, and prior to January 1, 2029:

(a) $1,470 for a new electric vehicle.

(b) $1,225 for a new plug-in hybrid electric vehicle or fuel cell vehicle.

(c) $1,225 for a previously owned electric vehicle.

(d) $980 for a previously owned plug-in hybrid electric vehicle or fuel cell vehicle.

(4) for the taxable year beginning January 1, 2029:

(a) $960 for a new electric vehicle.

(b) $800 for a new plug-in hybrid electric vehicle or fuel cell vehicle.

(c) $800 for a previously owned electric vehicle.

(d) $640 for a previously owned plug-in hybrid electric vehicle or fuel cell vehicle.

B. A state tax credit to an applicant for a clean car the department has certified shall not exceed:

(1) $3000 for a new clean car.

(2) $2500 for a previously owned clean car

[3.3.36.15 NMAC - N, 09/24/2024]

3.3.36.16 CERTIFICATION:

A. The energy, minerals and natural resources department shall provide the applicant with the certificates of eligibility in an electronic format.

B. The department shall provide certification through electronic notification to the applicant. The notification shall include the applicant's contact information, the last four digits of the social security number, or EIN, the clean car tax credit certification number and the tax credit amount.

C. If, after the department has issued a certification, any of the requirements are found to be insufficient, the department may rescind the certification.

[3.3.36.16 NMAC - N, 09/24/2024]

3.3.36.17 CLAIMING THE STATE TAX CREDIT:

A. A taxpayer who has received a certificate of eligibility from the energy minerals and natural resources department shall claim the credit with the taxation and revenue department as required in statute and outlined in the income tax form instructions.

B. A certificate of eligibility for the tax credit may be sold, exchanged or otherwise transferred to another taxpayer for the full value of the credit. The parties to such a transaction shall notify the taxation and revenue department of the sale, exchange or transfer within 10 days of the sale, exchange or transfer in an electronic format prescribed by the taxation and revenue department.

[3.3.36.17 NMAC - N, 09/24/2024]

7-2-18.37. CLEAN CAR CHARGING UNIT INCOME TAX CREDIT. (REPEALED EFFECTIVE JANUARY 1, 2031)

A. A taxpayer who is not a dependent of another individual and who, beginning on the effective date of this section and prior to January 1, 2030, purchases and installs an electric vehicle charging unit or fuel cell charging unit in New Mexico may claim a credit against the taxpayer's tax liability imposed pursuant to the Income Tax Act in an amount provided in Subsection B of this section. The tax credit provided by this section may be referred to as the "clean car charging unit income tax credit".

B. The amount of tax credit shall be in an amount equal to:

(1) for a direct current fast charger or fuel cell charging unit, twenty-five thousand dollars ($25,000) or the cost to purchase and install the direct current fast charger or fuel cell charging unit, whichever is less; and

(2) for all other electric vehicle charging units, four hundred dollars ($400) or the cost to purchase and install the electric vehicle charging unit, whichever is less.

C. A taxpayer shall apply for certification of eligibility for the tax credit from the energy, minerals and natural resources department on forms and in the manner prescribed by that department. Except as provided in Subsections H and I of this section, only one tax credit shall be certified for a direct current fast charger or a fuel cell charging unit per taxpayer per taxable year. The energy, minerals and natural resources department may issue rules governing the procedure for administering the provisions of this subsection.

D. An application for certification of eligibility shall include:

(1) a receipt for the purchase and installation of the electric vehicle charging unit or fuel cell charging unit;

(2) for electric vehicle charging units, a copy of the data sheet that specifies the connector type, plug type, voltage and current of the electric vehicle charging unit;

(3) for a fuel cell charging unit, technical specifications on the fuel dispensing unit and fuel storage system, including information about operational pressures of the fuel cell charging unit; and

(4) any other information the energy, minerals and natural resources department may require to evaluate eligibility for the credit.

E. If the energy, minerals and natural resources department determines that the taxpayer meets the requirements of this section, that department shall issue a dated certificate of eligibility to the taxpayer providing the amount of tax credit for which the taxpayer is eligible and the taxable years in which the credit may be claimed. The energy, minerals and natural resources department shall provide the department certificates of eligibility issued in an electronic format at regularly agreed upon intervals.

F. An application for certification of the tax credit shall be made no later than one year from the date in which the electric vehicle charging unit or fuel cell charging unit for which the credit is claimed is purchased and installed.

G. That portion of tax credit that exceeds a taxpayer's income tax liability in the taxable year in which the credit is claimed shall be refunded to the taxpayer.

H. Married individuals filing separate returns for a taxable year for which they could have filed a joint return may each claim only one-half of the tax credit that would have been claimed on a joint return.

I. A taxpayer may be allocated the right to claim the tax credit in proportion to the taxpayer's ownership interest if the taxpayer owns an interest in a business entity that is taxed for federal income tax purposes as a partnership or limited liability company and that business entity has met all requirements to be eligible for the credit. The total credit claimed by all members of the partnership or limited liability company shall not exceed the allowable credit pursuant to this section.

J. A taxpayer allowed to claim a tax credit pursuant to this section shall claim the tax credit in a manner required by the department. The credit shall be claimed within three taxable years of the end of the year in which the energy, minerals and natural resources department certifies the credit.

K. A taxpayer who claims the 2021 sustainable building tax credit for expenses of purchasing or installing an electric vehicle charging unit or fuel cell charging unit shall not be eligible to claim the tax credit provided by this section.

L. As used in this section:

(1) "direct current fast charger" means an electric vehicle charging unit that provides at least fifty kilowatts of direct current electrical power for charging an electric vehicle through a connector based on fast charging equipment standards and that is approved for installation for that purpose under the National Electrical Code through an underwriters laboratories certification or an equivalent certifying organization;

(2) "electric vehicle" means a motor vehicle subject to the registration fee pursuant to Section 66-6-2 or 66-6-4 NMSA 1978 that derives all of the vehicle's power from electricity stored in a battery that:

(a) has a capacity of not less than twenty-five kilowatt-hours;

(b) is capable of powering the vehicle for a range of at least one hundred miles; and

(c) is capable of being recharged from an external source of electricity;

(3) "electric vehicle charging unit" means a device that:

(a) is used to provide electricity to an electric vehicle or plug-in hybrid electric vehicle;

(b) is designed to create a connection between an electricity source and the electric vehicle or plug-in hybrid electric vehicle; and

(c) uses the electric vehicle's or plug-in hybrid electric vehicle's control system to ensure that electricity flows at an appropriate voltage and current level;

(4) "fuel cell charging unit" means a facility or unit that dispenses liquefied or compressed hydrogen for fuel cell vehicle refueling and that is approved for installation for that purpose under applicable codes and compliant with requirements of applicable certifying organizations;

(5) "fuel cell vehicle" means a motor vehicle subject to the registration fee pursuant to Section 66-6-2 or 66-6-4 NMSA 1978 that:

(a) uses a fuel cell to produce electricity that is used to drive an electric motor; and

(b) is capable of powering the vehicle for a range of at least one hundred miles; and

(6) "plug-in hybrid electric vehicle" means a motor vehicle subject to the

registration fee pursuant to Section 66-6-2 or 66-6-4 NMSA 1978 that derives part of the vehicle's power from electricity stored in a battery that:

(a) has a capacity of not less than six kilowatt-hours;

(b) is capable of powering a vehicle for a range of at least thirty miles; and

(c) is capable of being recharged from an external source of electricity.

(Laws 2024, Chapter 67, Section 28; Applicable to taxable years beginning on or after January 1, 2024)

3.3.37.7 DEFINITIONS:

For additional definitions see Section 7-2-18.37 NMSA 1978.

A. "Applicant" means a New Mexico taxpayer that has purchased and installed an electric vehicle charging unit or fuel cell charging unit in New Mexico.

B. "Application package" means the application documents an applicant submits to the department for certification to receive a state tax credit.

C. "Certified" or "certification" means department approval of an electric vehicle charging unit or fuel cell charging unit, which makes the applicant owning the system eligible for a state tax credit.

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

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

F. “National Electrical Code” (NEC), or NFPA 70, is a regionally adoptable standard for the safe installation of electrical wiring and equipment in the United States.

G. “NRTL” means nationally recognized testing laboratory which is an independent third-party organization recognized by the occupational safety & health administration (OSHA) that provides evaluation, testing and certification of products to ensure they meet the requirements of both the construction and general industry OSHA electrical standards.

H. “OpenADR” means open automated demand response, a highly secure, and two-way information exchange model and smart grid standard.

I. “Open charge point protocol” (OCPP) is an open-source communication standard for electric vehicle charging stations and network software companies.

J. “Wi-Fi” is a wireless networking technology that uses radio waves to provide wireless high-speed internet access.

[3.3.37.7 NMAC - N, 9/10/2024]

3.3.37.8 GENERAL PROVISIONS:

A. The state tax credit may be claimed for taxable years after January 1, 2024, and prior to January 1, 2030.

B. The tax credit provided by this section may be referred to as the clean car charging unit personal income tax credit.

C. One tax credit shall be certified per taxpayer per taxable year for a direct current fast charger or a fuel cell charging unit.

D. A taxpayer who claimed the 2021 sustainable building tax credit for expenses of purchasing or installing an electric vehicle charging unit or fuel cell charging unit shall not be eligible to claim the tax credit.

E. A taxpayer who is not a dependent of another individual and who, beginning on May 15, 2024, and prior to January 1, 2030, purchases and installs an electric vehicle charging unit or fuel cell charging unit in New Mexico may be eligible to claim a clean car charging unit personal income tax credit against the taxpayer's tax liability imposed pursuant to the Income Tax Act.

F. A taxpayer may be allocated the right to claim the tax credit in proportion to the taxpayer's ownership.

G. If a New Mexico taxpayer owns an interest in a business entity that is taxed for federal income tax purposes as a partnership or limited liability company and that business entity has met all requirements to be eligible for the credit, that taxpayer may be allocated the right to claim the tax credit in proportion to the taxpayer ownership interest.

H. The total credit claimed by all members of the partnership or limited liability company shall not exceed the allowable credit the department has certified.

I. In the event of a discrepancy between a requirement of 3.3.37 NMAC and an existing New Mexico regulation and licensing department or New Mexico taxation and revenue department rule promulgated prior to the adoption of 3.3.37 NMAC, the existing rule shall govern.

[3.3.37.8 NMAC - N, 9/10/2024]

3.3.37.9 TAX CREDIT ADMINISTRATION:

A. A taxpayer may apply for a clean car income tax credit from the energy, minerals, and natural resources department on an electronic form and in the manner prescribed by that department. The department will not accept paper applications or applications submitted by e-mail unless specifically authorized by the division.

B. An application package for a clean car charging unit shall include a completed clean car charging unit personal income tax credit electronic application and all required documents attachments.

(1) Partial applications will not be accepted.

(2) After the department has certified an application, applicants may not amend the certified application package to seek additional credits for that charging unit.

(3) If there are multiple owners of a clean car motor vehicle charging unit, they must submit a joint application.

C. If the energy, minerals, and natural resources department determines that the taxpayer meets the requirements for a clean car charging unit tax credit, the department shall issue a certificate of eligibility to the taxpayer providing the amount of tax credit for which the taxpayer is eligible and the taxable year in which the credit may be claimed.

(1) If an inspection is required for the charger, the final passing inspection date will determine tax year eligibility.

(2) If an inspection is not required for the charger, the date of purchase or installation will determine tax year eligibility, whichever comes later.

[3.3.37.9 NMAC - N, 9/10/2024]

3.3.37.10 APPLICATION REQUIREMENTS

A. The state tax credit is available for purchase and installation of a clean car charging unit designed for charging electric vehicles, plug-in hybrid electric vehicles or fuel cell vehicles purchased and installed between May 15, 2024, and January 1, 2030.

B. Applications for the state tax credit shall be made no later than one year from the date the charging unit is purchased or, if the unit is installed, the installation date.

C. The application package shall meet 3.3.37 requirements. If an application package fails to meet a requirement, the department shall disapprove the application.

[3.3.37.10 NMAC - N, 9/10/2024]

3.3.37.11 APPLICATION:

A. An applicant may apply for a New Mexico clean car charging unit personal income tax credit by submitting an application for a certificate of eligibility to the division using a department-developed application or an approved electronic application system.

B. To be considered complete, an application must include the state tax credit application and any required attachments.

C. Married individuals filing separate returns for a taxable year for which they could have filed a joint return may each claim only one-half of the tax credit that would have been claimed on a joint return.

D. The completed application shall consist of the following:

(1) The applicant's name, mailing address, e-mail address, county of installation, telephone number and last four of applicant's social security number or employer identification number (EIN) provided by a business applicant.

(2) The address where the clean car charging unit is located.

(3) Name of the electric utility service provider for that address.

(4) Whether the clean car charging unit is for private or public use.

(5) Total purchase price and price of any labor to install the operating clean car charging unit.

(6) If applicable, the date the charging unit received a successful electrical inspection.

(7) The charging unit specification sheet and description.

(a) A charging unit specification sheet must specify the connector type(s), plug type(s), manufacturer, model, serial number, voltage, and amperage, of the electric vehicle charging unit, and whether the current is alternating or direct.

(b) For a fuel cell charging unit, technical specifications on the fuel dispensing unit and fuel storage system, including information about operational pressures of the fuel cell charging unit.

(8) A statement the applicant signed and dated, which may be a form of electronic signature if approved by the department, agreeing:

(a) all information provided in the application package is true and correct to the best of the applicant's knowledge;

(b) the applicant has read the certification requirements contained in 3.3.37 NMAC;

(c) the applicant understands that the department must certify the clean car charging unit documents in the application package before the applicant becomes eligible for a state tax credit;

(d) a taxpayer who received the 2021 sustainable building tax credit for expenses of purchasing or installing an electric vehicle charging unit or fuel cell charging unit shall not be eligible to claim the tax credit, and;

(e) the clean car charging unit was installed in full compliance with all applicable federal, state, and local government statutes, ordinances, rules, regulations, codes and standards that were in effect at the time of installation.

[3.3.37.11 NMAC - N, 9/10/2024]

3.3.37.12 APPLICATION ATTACHMENTS:

A. An application for a clean car charging unit personal income tax credit shall contain the following information as attachments:

(1) proof of clean car charging unit purchase;

(2) post-installation digital photo of operating clean car charging unit;

(3) clean car charging unit specification sheet;

(a) a charging unit data sheet must specify the connector type(s), plug type(s), manufacturer, model, serial number, voltage, and amperage of the electric vehicle charging unit, and whether the electrical current is alternating or direct;

(b) a fuel cell charging unit must specify technical specifications on the fuel dispensing unit and fuel storage system, including information about operational pressures of the fuel cell charging unit' and;

(c) the specification sheet must match the charging unit submitted for the tax credit;

(4) A copy of any applicable building code authority inspections, including permit number, issuance date, and date of inspection, noted on a physical form, or a photo of inspection sticker or a web-based report approved by the applicable building code authority, or similar document if applicable;

(5) Any additional information the energy, minerals and natural resources department may require to determine tax credit eligibility.

[3.3.37.12 NMAC - N, 9/10/2024]

3.3.37.13 APPLICATION REVIEW PROCESS:

A. The department shall consider complete applications in the order received.

B. The department shall review the application package to check the accuracy of the applicant's documentation, determine whether the department shall certify the clean car charging unit and calculate the amount of the state tax credit.

(1) The department shall disapprove an application that is not complete, correct, or does not meet the approval criteria.

(2) Duplicate applications or multiple submissions for the same project will be rejected.

C. If the department finds the application package meets the requirements of 3.3.37, and a state tax credit is available, the department shall certify the applicant's claim for clean car charging unit.

D. If applicable, the department's disapproval notification shall state the reasons why the department disapproved the application. The applicant may resubmit a corrected electronic application package for a disapproved project, and it shall be placed at the beginning of the queue and reviewed as if it were a new application.

[3.3.37.13 NMAC - N, 9/10/2024]

3.3.37.14 CLEAN CAR CHARGING UNIT REQUIREMENTS:

A. A direct current fast charger must provide at least 50 kilowatts of direct current electrical power for charging an electric vehicle through a connector based on fast charging equipment standards and is approved for installation for that purpose under the National Electrical Code through an underwriter's laboratories certification or an equivalent certifying organization.

B. An electrical vehicle charger used to provide electricity to an electric vehicle or plug-in hybrid electric vehicle must be designed to create a connection between an electricity source and the electric vehicle or plug-in hybrid vehicle; and uses the electric vehicles or plug-in hybrid electric vehicle's control system to ensure that electricity flows at an appropriate voltage and current level.

C. A fuel cell charging unit is a facility or unit that dispenses liquefied or compressed hydrogen for fuel cell vehicle refueling and is approved for installation for that purpose under applicable codes and compliant with the requirements of applicable certifying organizations.

D. The clean car charging unit must be made of new equipment, components, and materials to be eligible for a tax credit.

E. Charging unit equipment must meet the following requirements:

(1) Charging software is able to connect to OpenADR or OCPP.

(2) Charging unit can connect to Wi-Fi or wireless networking technology.

(3) Charging unit is a 'Listed' or 'Recognized' product under the production control of the issuing NRTL.

[3.3.37.14 NMAC - N, 9/10/2024]

3.3.37.15 CALCULATING THE STATE TAX CREDIT:

A. The tax credit is limited to the purchase and the installation labor cost for the clean car charging unit, whichever is less.

B. The amount of tax credit shall be:

(1) for a direct current fast charger or fuel cell charging unit, $25,000 or the cost to purchase and install the direct current fast charger or fuel cell charging unit, whichever is less;

(2) for all other electric vehicle charging units, $400 or the cost to purchase and install the electric vehicle charging unit, whichever is less.

[3.3.37.15 NMAC - N, 9/10/2024]

3.3.37.16 CERTIFICATION:

A. The energy, minerals and natural resources department shall provide the applicant with the certificate of eligibility in an electronic format.

B. The department provides certification through electronic notification to the applicant. The notification shall include the applicant's contact information, last four digits of the social security number or EIN, clean car charging unit certification number and the state tax credit amount.

C. If, after the department has issued a certification, any of the requirements are found to be insufficient, the department may rescind the certification.

[3.3.37.16 NMAC - N, 9/10/2024]

3.3.37.17 CLAIMING THE STATE TAX CREDIT:

A taxpayer who has received certificate of eligibility to claim the tax credit must apply to the taxation and revenue department and shall provide the taxation and revenue department with a copy of the certification of eligibility in manner and within a timeframe prescribed by the taxation and revenue department.

[3.3.37.17 NMAC - N, 9/10/2024]

7-2-18.38. GEOTHERMAL ELECTRICITY GENERATION INCOME TAX CREDIT.

A. For taxable years ending prior to January 1, 2032, a taxpayer who is not a dependent of another individual and who holds an interest in a geothermal electricity generation facility may apply for, and the department may allow, a credit against the taxpayer's tax liability imposed pursuant to the Income Tax Act. The tax credit provided by this section may be referred to as the "geothermal electricity generation income tax credit".

B. The amount of a tax credit allowed pursuant to this section shall be an amount equal to one and one-half cents ($0.015) per kilowatt-hour of electricity generated in New Mexico in a taxable year by the geothermal electricity generation facility in which the taxpayer holds an interest.

C. A taxpayer shall apply for certification of eligibility for the credit provided by this section from the energy, minerals and natural resources department on forms and in the manner prescribed by that department. The total annual aggregate amount of credits that may be certified for geothermal electricity generation income tax credits and geothermal electricity generation corporate income tax credits in any calendar year is five million dollars ($5,000,000). Completed applications shall be considered in the order received. Applications for certification received after this limitation has been met in a calendar year shall not be approved for that calendar year, but shall be considered for certification in the following calendar year. The application shall include proof that the taxpayer is eligible for certification, including that the geothermal electricity generation facility that produced the energy for which the taxpayer is claiming credit, the geothermal resources used by the geothermal electricity generation facility and the taxpayer's interest in the geothermal electricity generation facility are in accordance with the definitions set forth in this section. For taxpayers approved to receive the credit, the energy, minerals and natural resources department shall issue a certificate of eligibility stating the amount of credit to which the taxpayer is entitled and the taxable year in which the credit may be claimed. The certificate of eligibility shall be numbered for identification and declare the date of issuance and the amount of the tax credit allowed.

D. A taxpayer may claim a geothermal electricity generation income tax credit for the taxable year in which electricity was generated in New Mexico by a geothermal electricity generation facility in which the taxpayer holds an interest. To receive the credit provided by this section, a taxpayer shall apply to the department on forms and in the manner prescribed by the department. The application shall include a certificate of eligibility issued pursuant to Subsection C of this section.

E. That portion of a credit that exceeds a taxpayer's tax liability in the taxable year in which the credit is claimed may be carried forward for up to three consecutive years.

F. Married individuals filing separate returns for a taxable year for which they could have filed a joint return may each claim only one-half of the credit that would have been claimed on a joint return.

G. A taxpayer may be allocated the right to claim a credit provided by this section in proportion to the taxpayer's ownership interest if the taxpayer owns an interest in a business entity that is taxed for federal income tax purposes as a partnership or limited liability company and that business entity has met all of the requirements to be eligible for the credit. The total credit claimed by all members of the partnership or limited liability company shall not exceed the maximum amount of the credit allowed pursuant to this section.

H. 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.

I. The tax credit provided by this section shall be included in the tax expenditure budget pursuant to Section 7-1-84 NMSA 1978, including the annual aggregate cost of the tax credit.

J. As used in this section:

(1) "geothermal electricity generation facility" means a facility located in New Mexico that generates electricity from geothermal resources and:

(a) for new facilities, begins construction on or after January 1, 2025; or

(b) for existing facilities, on or after January 1, 2025, increases the amount of electricity generated from geothermal resources the facility generated prior to that date by at least one hundred percent;

(2) "geothermal resources" means the natural heat of the earth in excess of two hundred fifty degrees Fahrenheit or the energy, in whatever form, below the surface of the earth present in, resulting from, created by or that may be extracted from this natural heat in excess of two hundred fifty degrees Fahrenheit and all minerals in solution or other products obtained from naturally heated fluids, brines, associated gases and steam, in whatever form, found below the surface of the earth, but excluding oil, hydrocarbon gas and other hydrocarbon substances and excluding the heating and cooling capacity of the earth not resulting from the natural heat of the earth in excess of two hundred fifty degrees Fahrenheit as may be used for the heating and cooling of buildings through an on-site geoexchange heat pump or similar on-site system; and

(3) "interest in a geothermal electricity generation facility" means title to a geothermal electricity generation facility; a leasehold interest in such 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 such 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 such facility.
(Laws 2025, Chapter 130, Section 47)

7-2-18.39. ADVANCED ENERGY EQUIPMENT INCOME TAX CREDIT. (REPEALED EFFECTIVE JANUARY 1, 2034)

A. The tax credit provided by this section may be referred to as the "advanced energy equipment income tax credit". A taxpayer who is not a dependent of another individual, who makes qualified expenditures for a qualified manufacturing facility located in New Mexico and who files an individual New Mexico income tax return for a taxable year beginning on or after January 1, 2025, and prior to January 1, 2033, may claim the tax credit in the amount provided in Subsection B of this section.

B. The amount of the tax credit shall be in an amount equal to the lesser of twenty percent of the amount of the qualified expenditures made by the taxpayer for a qualified manufacturing facility or twenty-five million dollars ($25,000,000).

C. Prior to incurring a qualified expenditure, a taxpayer shall apply for preliminary certification of eligibility for the tax credit from the energy, minerals and natural resources department on forms and in the manner prescribed by that department. Such preliminary certification shall be made in consultation with the economic development department and shall be limited to confirming that the qualified expenditures proposed to be made by the taxpayer will in whole or in part be used to produce advanced energy products and providing an estimate of the amount of tax credit for which the taxpayer may be eligible. Only one certificate of eligibility shall be issued for all activities
performed at a qualified manufacturing facility, regardless of ownership of the facility.

D. Within twelve months of commencement of production of any advanced energy product, the taxpayer shall seek final certification from the energy, minerals and natural resources department. The total annual aggregate amount of advanced energy equipment income tax credits and advanced energy equipment corporate income tax credits that may be certified in a calendar year shall not exceed twenty-five million dollars ($25,000,000). An application for final certification shall include information required by the energy, minerals and natural resources department to determine eligibility for the tax credit, including information substantiating qualified expenditures. If, after consultation with the economic development department, the energy, minerals and natural resources department determines that the taxpayer meets the requirements of this section, the energy, minerals and natural resources department shall issue a dated certificate of eligibility to the taxpayer providing the amount of tax credit for which the taxpayer is eligible and the taxable years in which the credit may be claimed. The energy, minerals and natural resources department shall provide the department with the certificates of eligibility issued pursuant to this subsection in an electronic format at regularly agreed-upon intervals. A certificate of eligibility for the tax credit may be sold, exchanged or otherwise transferred to another taxpayer in increments of not less than one million dollars ($1,000,000); provided that if the total amount certified is less than one million dollars ($1,000,000), the certificate of the entire amount of the credit may be transferred. 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 in an electronic format prescribed by the department.

E. A taxpayer allowed to claim the tax credit shall claim the credit in a manner required by the department. The tax credit shall be claimed within one year of receiving final certification from the energy, minerals and natural resources department. The taxpayer shall claim the amount certified and approved against the taxpayer's income tax liabilities. Any amount of credit that exceeds the taxpayer's income tax liabilities may be carried forward for five consecutive taxable years. A taxpayer who claims the tax credit shall report to the department and the energy, minerals and natural resources department on the continued operations of the qualified manufacturing facility.

F. Married individuals filing separate returns for a taxable year for which they could have filed a joint return may each claim only one-half of the tax credit that would have been claimed on a joint return.

G. A taxpayer may be allocated the right to claim the tax credit in a proportion to the taxpayer's ownership interest if the taxpayer owns an interest in a business entity that is taxed for federal income tax purposes as a partnership or limited liability company and that business entity has met all of the requirements to be eligible for the credit. The total credit claimed by all members of the partnership or limited liability company shall not exceed the allowable credit pursuant to this section.

H. If the taxpayer or a successor in the business of the taxpayer ceases operations at the qualifying manufacturing facility or ceases to produce advanced energy products for at least one hundred eighty days within a two-year period after the taxpayer has claimed the tax credit, any amount of credit that received final certification with respect to that facility that is not claimed against a taxpayer's tax liability shall be extinguished, and within thirty days after the one hundred eightieth day of cessation of operations, the taxpayer who received final certification pursuant to Subsection D of this section shall pay to the department the tax liability against which the certified credit was claimed. For the purposes of this section, a taxpayer shall not be deemed to have ceased operations during reasonable periods for maintenance or retooling, for the repair or replacement of facilities damaged or destroyed or during labor disputes.

I. The tax credit provided by this section shall be included in the tax expenditure budget pursuant to Section 7-1-84 NMSA 1978, including the annual aggregate cost of the tax credit.

J. As used in this section:

(1) "advanced energy product" means:

(a) a solar energy component, including a solar module, photovoltaic cell, photovoltaic wafer, solargrade polysilicon, torque tube, structural fastener or polymeric backsheet;

(b) a wind energy component, including a wind turbine blade, nacelle and tower;

(c) a battery component, including an electrode-active material, a battery cell and a battery module;

(d) a fusion machine and the components of a fusion machine that can transform atomic nuclei through fusion processes into different elements, isotopes or other particles, including associated systems essential to facilitate fusion processes;

(e) a critical mineral, if converted or purified to specified purities or forms, including aluminum, antimony, arsenic, barite, bismuth, cerium, cesium, chromium, cobalt, dysprosium, erbium, europium, fluorspar, gadolinium, gallium, germanium, graphite, hafnium, holmium, indium, iridium, lanthanum, lithium, lutetium, magnesium, manganese, neodymium, nickel, niobium, palladium, platinum, praseodymium, rhodium, rubidium, ruthenium, samarium, tantalum, tellurium, terbium, thulium, tin, titanium, tungsten, vanadium, ytterbium, yttrium, zinc and zirconium; and

(f) an inverter that is an end product, which is suitable to convert direct current energy from one or more solar module or certified distributed wind energy systems into alternating current electricity, including a central inverter, commercial inverter, distributed wind inverter, microinverter, residential inverter or utility inverter;

(2) "essential" means directly necessary to the production of an advanced

energy product;

(3) "manufacturing equipment" means an essential machine, mechanism or tool or a component of an essential machine, mechanism or tool used directly and exclusively in a taxpayer's qualified manufacturing facility and that is subject to depreciation pursuant to the Internal Revenue Code by the taxpayer carrying on the manufacturing. "Manufacturing equipment" does not include a vehicle that leaves the site of a manufacturing operation for the purpose of transporting persons or property, including property for which the taxpayer claims a credit pursuant to Section 7-9-79 NMSA 1978;

(4) "qualified expenditure" means an expenditure made on or after January 1, 2025 and prior to January 1, 2033 for the purchase of that portion of the costs of manufacturing equipment dedicated to manufacturing advanced energy products; and

(5) "qualified manufacturing facility" means a facility located in New Mexico, including any connected, associated or subsidiary facilities, that employs personnel to perform production tasks with manufacturing equipment not previously existing at the facility to produce advanced energy products.

(Laws 2025, Chapter 17, Section 1 – Applicable to taxable years beginning on or after January 1, 2026)

7-2-18.40. *LOCAL JOURNALIST EMPLOYMENT INCOME TAX CREDIT. (TAXABLE YEARS BEGINNING ON OR AFTER JANUARY 1, 2027)*

A. For taxable years prior to January 1, 2032, a taxpayer who is not a dependent of another individual and is an owner of a local news organization that employs a journalist may claim a credit against the taxpayer's tax liability imposed pursuant to the Income Tax Act in an amount provided in Subsection B of this section. The tax credit provided by this section may be referred to as the "local journalist employment income tax credit".

B. The amount of tax credit shall be in an amount equal to thirty percent of wages paid to each journalist employed by a local news organization.

C. A taxpayer shall apply for certification of eligibility for the tax credit from the department on forms and in the manner prescribed by the department no later than one year following the end of the calendar year in which the wages were paid. A taxpayer shall not be eligible to receive a tax credit for more than seventy-five journalists whom the taxpayer employs as a local news organization and, except as provided in Subsections F and G of this section, only one tax credit shall be certified for each journalist employed by a local news organization per taxable year. The total annual aggregate amount of local journalist employment income tax credits and local journalist employment corporate income tax credits that may be certified in a calendar year shall not exceed four million dollars ($4,000,000). Completed applications shall be considered in the order received.

D. If the department determines that the taxpayer meets the requirements of this section, the department shall issue a dated certificate of eligibility to the taxpayer providing the amount of tax credit for which the taxpayer is eligible and the taxable years in which the credit may be claimed.

E. That portion of tax credit that exceeds a taxpayer's income tax liability in the taxable year in which the credit is claimed shall be refunded to the taxpayer.

F. Married individuals filing separate returns for a taxable year for which they could have filed a joint return may each claim only one-half of the tax credit that would have been claimed on a joint return.

G. A taxpayer may be allocated the right to claim the tax credit in proportion to the taxpayer's ownership interest if the taxpayer owns an interest in a business entity that is taxed for federal income tax purposes as a partnership or limited liability company and the business entity has met all requirements to be eligible for the credit. The total credit claimed by all members of the partnership or limited liability company shall not exceed the allowable credit pursuant to this section.

H. A taxpayer allowed to claim a tax credit pursuant to this section shall claim the tax credit in a manner required by the department.

I. The tax credit provided by this section shall be included in the tax expenditure budget pursuant to Section 7-1-84 NMSA 1978, including the total annual aggregate cost of the tax credit.

J. As used in this section:

(1) "journalist" means a person who:

(a) is paid by a local news organization to regularly gather, prepare, collect, photograph, record, direct the recording of, produce, write, edit, report or publish news or information that concerns state or local events or other matters of public interest for dissemination to the state or a local community through reporting activities, including conducting interviews, observing current events or analyzing documents;

(b) resides within fifty miles of the coverage area assigned by the local news organization; and

(c) is employed as a journalist by the local news organization for more than twenty-eight weeks of the taxable year in which the credit is claimed;

(2) "local news organization" means an entity that:

(a) provides a print or digital publication that engages professionals who regularly gather, prepare, collect, photograph, record, direct the recording of, produce, write, edit, report or publish news or information that concerns state or local events or other matters of public interest for dissemination to the state or a local community through reporting activities, including conducting interviews, observing current events or analyzing documents;

(b) pays at least one individual, either through employment or by contract with the entity, as a journalist;

(c) in the case of print publications, has published at least one print publication per month over the previous twenty-four months and holds a valid United States postal service periodical permit or has at least thirty percent of its content dedicated to state or local news;

(d) in the case of digital-only entities, has published at least three originally produced stories about the state or a local community per week averaged over the previous twenty-four months and has at least fifty percent of its digital audience in New Mexico, averaged over a twelve-month period;

(e) discloses in its print publication or on its website its beneficial ownership or, in the case of a not-for-profit entity, its board of directors;

(f) in the case of an organization that demonstrates to the department that the organization has been granted exemption from the federal income tax by the United States commissioner of internal revenue as organizations described in Section 501(c)(3) of the Internal Revenue Code, has declared the coverage of state or local news as the stated mission in its filings with the federal internal revenue service;

(g) has not received more than ten percent of its gross receipts for the previous year from political action committees or other entities described in Section 527 of the Internal Revenue Code, or from an organization that has been granted exemption from the federal income tax by the United States commissioner of internal revenue as an organization described in Section 501(c)(4) or 501(c)(6) of the Internal Revenue Code; and

(h) is not a publicly traded entity or is no more than forty-nine percent owned, directly or indirectly, by a publicly traded entity or subsidiary; and

(3) "wages" means not more than fifty thousand dollars ($50,000) in compensation paid by a local news organization to a journalist through the organization's payroll

system, including those wages that the journalist elects to defer or redirect or the journalist's contribution to a 401(k) or cafeteria plan program. "Wages" does not mean benefits or the organization's share of payroll taxes, social security or medicare contributions, federal or state unemployment insurance contributions or workers' compensation.
(Laws 2025, Chapter 69, Section 3)

7-2-18.42. PHYSICIAN TAX CREDIT. *(TAXABLE YEARS BEGINNING ON OR AFTER JANUARY 1, 2027)*

A. For taxable years prior to January 1, 2032, a taxpayer who files an individual New Mexico tax return, is not a dependent of another individual, is a physician and provides health care services in New Mexico for at least one thousand five hundred eighty-four hours during a taxable year may claim a credit against the tax liability imposed by the Income Tax Act for that taxable year in an amount equal to ten thousand dollars ($10,000). The credit provided in this section may be referred to as the "physician tax credit".

B. A taxpayer shall apply for certification of eligibility for the tax credit from the department of health on forms and in the manner prescribed by that department. Completed applications shall be considered in the order received. For a taxpayer approved to receive the credit, the department of health shall issue a certificate of eligibility to the qualifying physician. The department of health shall provide the department with certificates of eligibility issued pursuant to this subsection in an electronic format at regularly agreed-upon intervals.

C. That portion of a tax credit that exceeds a taxpayer's tax liability in the taxable year in which the credit is being claimed may be carried forward for up to three consecutive taxable years.

D. A taxpayer allowed a tax credit pursuant to this section shall claim the credit on forms and in a manner required by the department.

E. The tax credit provided by this section shall be included in the tax expenditure budget pursuant to Section 7-1-84 NMSA 1978, including the annual aggregate cost of the tax credit.

F. As used in this section, "physician" means a health professional who is a medical physician or an osteopathic physician licensed to practice medicine in New Mexico pursuant to the Medical Practice Act.
(Laws 2025, Chapter 69, Section 6)

7-2-18.41. LOCAL NEWS PRINTER INCOME TAX CREDIT. *(TAXABLE YEARS BEGINNING ON OR AFTER JANUARY 1, 2027)*

A. For taxable years prior to January 1, 2032, a taxpayer who is not a dependent of another individual and is an owner of a local news printer that employs a qualified employee may claim a credit against the taxpayer's tax liability imposed pursuant to the Income Tax Act in an amount provided in Subsection B of this section. The tax credit provided by this section may be referred to as the "local news printer income tax credit".

B. The amount of tax credit shall be in an amount equal to the wages paid to each qualified employee employed by a local news printer in the taxable year for which the tax credit is claimed, not to exceed:

(1) ten thousand dollars ($10,000) for a qualified employee working an average of twenty hours or more per week in the taxable year; and

(2) five thousand dollars ($5,000) for a qualified employee working an average of less than twenty hours per week in the taxable year.

C. A taxpayer shall apply for certification of eligibility for the tax credit from the department on forms and in the manner prescribed by the department no later than one year following the end of the calendar year in which the wages were paid. A taxpayer shall not be eligible to receive a tax credit for more than one hundred qualified employees whom the taxpayer employs as a local news printer and, except as provided in Subsections F and G of this section, only one tax credit shall be certified for each qualified employee employed by a local news printer per taxable year. The total annual aggregate amount of local news printer income tax credits and local news printer corporate income tax credits that may be certified in a calendar year shall not exceed one million dollars ($1,000,000). Completed applications shall be considered in the order received.

D. If the department determines that the taxpayer meets the requirements of this section, the department shall issue a dated certificate of eligibility to the taxpayer providing the amount of tax credit for which the taxpayer is eligible and the taxable years in which the credit may be claimed.

E. That portion of tax credit that exceeds a taxpayer's income tax liability in the taxable year in which the credit is claimed shall be refunded to the taxpayer.

F. Married individuals filing separate returns for a taxable year for which they could have filed a joint return may each claim only one-half of the tax credit that would have been claimed on a joint return.

G. A taxpayer may be allocated the right to claim the tax credit in proportion to the taxpayer's ownership interest if the taxpayer owns an interest in a business entity that is taxed for federal income tax purposes as a partnership or limited liability company and the business entity has met all requirements to be eligible for the credit. The total credit claimed by all members of the partnership or limited liability company shall not exceed the allowable credit pursuant to this section.

H. A taxpayer allowed to claim a tax credit pursuant to this section shall claim the tax credit in a manner required by the department.

I. The credit provided by this section shall be included in the tax expenditure budget pursuant to Section 7-1-84 NMSA 1978, including the total annual aggregate cost of the credit.

J. As used in this section:

(1) "local news organization" means an entity that:

(a) provides a print or digital publication that engages professionals who regularly gather, prepare, collect, photograph, record, direct the recording of, produce, write, edit, report or publish news or information that concerns state or local events or other matters of public interest for dissemination to the state or a local community through reporting activities, including conducting interviews, observing current events or analyzing documents;

(b) pays at least one individual, either through employment or by contract with the entity, as a qualified employee;

(c) in the case of print publications, has published at least one print publication per month over the previous thirty-six months and holds a valid United States postal service periodical permit or has at least thirty percent of its content dedicated to state or local news;

(d) in the case of digital-only entities, has published at least five originally produced stories about the state or a local community per week over the previous thirty-six months and has at least fifty percent of its digital audience in New Mexico, averaged over a twelve-month period;

(e) discloses in the entity's print publication or on the entity's website the entity's beneficial ownership or, in the case of a not-for-profit entity, the entity's board of directors;

(f) in the case of an organization that demonstrates to the department that the organization has been granted exemption from the federal income tax by the United States commissioner of internal revenue as organizations described in Section 501(c)(3) of the Internal Revenue Code, has declared the coverage of state or local news as the stated mission in the organization's filings with the federal internal revenue service;

(g) has not received more than ten percent of the entity's gross receipts for the previous year from political action committees or other entities described in Section 527 of the Internal Revenue Code, or from an organization that has been granted exemption from the federal income tax by the United States commissioner of internal revenue as an organization described in Section 501(c)(4) or 501(c)(6) of the Internal Revenue Code; and

(h) is not a publicly traded entity or is no more than forty-nine percent owned, directly or indirectly, by a publicly traded entity or subsidiary;

(2) "local news printer" means an entity that:

(a) provides manufacturing, production and printing services using a web press designed and optimized for printing newspapers for a local news organization;

(b) has been engaging in the business of manufacturing, producing and printing newspapers for at least five years; employees; and

(c) employs at least five qualified

(d) is not a publicly traded entity or is no more than forty-nine percent owned, directly or indirectly, by a publicly traded entity or subsidiary;

(3) "qualified employee" means a person who:

(a) is paid by a local news printer to regularly perform duties related to pre-press, press and post-press newspaper production to prepare newspapers for transition to delivery and distribution personnel;

(b) works at a physical location in New Mexico; and

(c) works as a qualified employee for the local news printer for at least twenty-five percent of the taxable year in which the credit is claimed; and

(4) "wages" means compensation paid by a local news printer to a qualified employee through the organization's payroll system, including those wages that the qualified employee elects to defer or redirect or the qualified employee's contribution to a 401(k) or cafeteria plan program. "Wages" does not mean benefits or the organization's share of payroll taxes, social security or medicare contributions, federal or state unemployment insurance contributions or workers' compensation.

(Laws 2025, Chapter 69, Section 7)

7-2-19. REPEALED MAY 16, 1990

7-2-20. 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 1990, Chapter 49, Section 11)

3.3.20.8 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 section (3.3.20.8 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.

[1/25/83, 12/29/89, 3/16/92, 1/15/97; 3.3.20.8 NMAC - Rn & A, 3 NMAC 3.20.8, 12/14/00]

3.3.20.9 INFORMATION RETURNS; OIL AND GAS WITHHOLDING

For annual statements of withholding and information returns to be filed by remitters of oil and gas proceeds see Sections 3.3.5.7 through 3.3.5.15 NMAC promulgated under Section 7-3A-7 NMSA 1978.

[3.3.20.9 NMAC – N, 10/15/03]

7-2-21. FISCAL YEARS PERMITTED.

Any individual who files income tax returns under the Internal Revenue Code on the basis of a fiscal year shall report income under the Income Tax Act on the same basis.

(Laws 1981, Chapter 37, Section 31)

7-2-21.1. ACCOUNTING METHODS.

A taxpayer shall use the same accounting methods for reporting income for New Mexico income tax purposes as are used in reporting income for federal income tax purposes.

(Laws 1981, Chapter 37, Section 32)

7-2-22. ADMINISTRATION.

The Income Tax Act shall be administered pursuant to the provisions of the Tax Administration Act.

(Laws 1981, Chapter 37, Section 33)

7-2-23. REPEALED JULY 1, 2025

7-2-24. OPTIONAL DESIGNATION OF TAX REFUND CONTRIBUTION.

A. Except as provided in Subsection C of this section, an individual whose state income tax liability after application of allowable credits and tax rebates in any year is lower than the amount of money held by the department to the credit of such individual for that tax year may designate any portion of the income tax refund due to the individual to be paid to the entities or funds as provided in Subsection B of this section. In the case of a joint return, both individuals must make such designation.

B. The department shall provide for the state income tax form to allow the designation of such contributions as follows:

(1) to the game protection fund;

(2) to the energy, minerals and natural resources department for the conservation planting revolving fund for the planting of trees in New Mexico;

(3) to the board of regents of New Mexico state university for the New Mexico department of agriculture's healthy soil program;

(4) to the veterans' services department for the veterans' state cemetery fund;

(5) to the public education department for the substance abuse education fund to provide substance abuse educational programs in New Mexico schools;

(6) to the board of regents of the university of New Mexico for the amyotrophic lateral sclerosis research fund for amyotrophic lateral sclerosis (Lou Gehrig's disease) research;

(7) to the state parks division of the energy, minerals and natural resources department for the kids in parks education program;

(8) to the department of military affairs for assistance to members of the New Mexico national guard and to their families;

(9) to the veterans' services department for the operation, maintenance and improvement of the Vietnam veterans memorial near Angel Fire, New Mexico;

(10) to the veterans' services department for the veterans' enterprise fund to carry out the programs, duties or services of the veterans' services department;

(11) to the higher education department for the lottery tuition fund to provide tuition assistance for New Mexico resident undergraduates;

(12) to the New Mexico livestock board for the equine shelter rescue fund;

(13) to the aging and long-term services department to enhance or expand senior services through statewide area agencies on aging grant programs, including senior services provided through the north central New Mexico economic development district as the non-metro area agency on aging, the city of Albuquerque/Bernalillo county area agency on aging, the Indian area agency on aging and the Navajo area agency on aging;

(14) to the board of veterinary medicine for the animal care and facility fund to carry out the statewide dog and cat spay and neuter program;

(15) to the New Mexico mortgage finance authority for the New Mexico housing trust fund for affordable housing programs; and

(16) two dollars ($2.00) to a state political party of the individual's choosing that on January 1 of the taxable year for which the return is filed meets the requirements of Subsection A of Section 1-7-2 NMSA 1978.

C. The provisions of this section do not apply to income tax refunds subject to interception under the provisions of the Tax Refund Intercept Program Act and any designation made under the provisions of this section to such refunds is void.

D. The department shall disregard a direction on a return to make an optional refund contribution if the amount of refund due on the return is determined by the department to be less than the sum of the amounts directed to be contributed.

E. Notwithstanding the provisions of Section 7-1-26 NMSA 1978, a taxpayer shall not claim and the department shall not allow a refund with respect to any optional refund contribution that was made by the department at the direction of the taxpayer.

(Laws 2025, Chapter 130, Section 48)

7-2-24.1 AND 7-2-24.2. REPEALED JULY 1, 2025

7-2-25. REPEALED JUNE 19, 1987

7-2-26. REPEALED DECEMBER 31, 1986

7-2-27. REPEALED MAY 18, 2016

7-2-28. REPEALED JULY 1, 2025

7-2-28.1. VETERANS' STATE CEMETERY FUND; CREATED.

The "veterans' state cemetery fund" is created as a nonreverting fund in the state treasury. The fund consists of appropriations, gifts, grants, donations and amounts designated pursuant to Section 7-2-24 NMSA 1978. Money in the fund at the end of a fiscal year shall not revert to any other fund. The veterans' services department shall administer the fund, and money in the fund is appropriated to the veterans' services department.
(Laws 2025, Chapter 130, Section 49)

7-2-29. REPEALED JULY 1, 2025

7-2-30. TO 7-2-30.9 REPEALED JULY 1, 2025

7-2-30.10. REPEALED JANUARY 1, 2023

7-2-30.11. REPEALED JULY 1, 2025

7-2-31. REPEALED JULY 1, 2025

7-2-31.1. OPTIONAL REFUND CONTRIBUTION PROVISIONS; CONDITIONAL REPEAL.

A. By August 31 of each year, the secretary shall determine the total amount contributed through the preceding July 31 on returns filed for taxable years ending in the preceding calendar year pursuant to each purpose stated in Section 7-2-24 NMSA 1978.

B. If the secretary's determination pursuant to Subsection A of this section regarding an optional refund contribution provision is that the amount contributed is less than ten thousand dollars ($10,000), the secretary shall certify that fact to the secretary of state. Any optional refund contribution purpose for which a certification is made for three consecutive years is repealed and shall no longer be included on the state income tax form, effective on the January 1 following the third certification.
(Laws 2025, Chapter 130, Section 50)

7-2-32. DEDUCTION; PAYMENTS INTO EDUCATION TRUST FUND.

A taxpayer may claim a deduction from net income in an amount equal to the payments made by the taxpayer into the education trust fund pursuant to an education investment agreement or prepaid tuition contract under the Education Trust Act in the taxable year for which the deduction is being claimed. The amount of payments made on behalf of any one beneficiary that may be deducted shall not exceed in the aggregate the cost of attendance at the applicable institution of higher education, as determined by the education trust board. Married individuals who file separate returns for the taxable year in which they could have filed a joint return may each claim only one-half of the deduction that would have been allowed on the joint return. Individuals having income both within and without this state shall apportion this deduction in accordance with regulations of the secretary.
(Laws 2023, Chapter 17, Section 2)

7-2-33. REPEALED JUNE 20, 2003

7-2-34. DEDUCTION; NET CAPITAL GAIN INCOME.

A. A taxpayer may claim a deduction from net income in an amount equal to the greater of:

(1) the taxpayer's net capital gain income for the taxable year for which the deduction is being claimed, but not to exceed two thousand five hundred dollars ($2,500); or

(2) forty percent of up to one million dollars ($1,000,000) of the taxpayer's net capital gain income from the sale of a business that is allocated or apportioned to New Mexico pursuant to Section 7-2-11 NMSA 1978 for the taxable year for which the deduction is being claimed.

B. Married individuals who file separate returns for a taxable year in which they could have filed a joint return may each claim only one-half of the deduction provided by this section that would have been allowed on the joint return.

C. As used in this section, "net capital gain" means "net capital gain" as defined in Section 1222 (11) of the Internal Revenue Code.

(Laws 2024, Chapter 67, Section 8; Applicable to taxable years beginning on or after January 1, 2025)

7-2-35. DELETED

(Laws 2000 (2nd S.S.), Chapter 7, Section 1 – Contingent effective date – never became effective.)

7-2-36. DEDUCTION; EXPENSES RELATED TO ORGAN DONATION.

A. A taxpayer may claim a deduction from net income in an amount not to exceed ten thousand dollars ($10,000) of organ donation-related expenses, including lost wages, lodging expenses and travel expenses, incurred during the taxable year by the taxpayer or the taxpayer's dependent as a result of the taxpayer's or dependent's donation of a human organ to another person for transfer of that human organ to the body of another person.

B. A husband and wife who file separate returns for a taxable year in which they could have filed a joint return may each claim only one-half of the deduction provided by this section that would have been allowed on a joint return.

C. For the purposes of this section:

(1) "dependent" means "dependent" as defined by Section 152 of the Internal Revenue Code, as that section may be amended or renumbered; and

(2) "human organ" means all or part of a heart, liver, pancreas, kidney, intestine, lung or bone marrow.

(Laws 2005, Chapter 176, Section 1)

7-2-37. DEDUCTION; UNREIMBURSED OR UNCOMPENSATED MEDICAL CARE EXPENSES.

A. Prior to January 1, 2025, a taxpayer may claim a deduction from net income in an amount determined pursuant to Subsection B of this section for medical care expenses paid during the taxable year for medical care of the taxpayer, the taxpayer's spouse or a dependent if the expenses are not reimbursed or compensated for by insurance or otherwise and have not been included in the taxpayer's itemized deductions, as defined in Section 63 of the Internal Revenue Code, for the taxable year.

B. The deduction provided in Subsection A of this section may be claimed in an amount equal to the following percentage of medical care expenses paid during the taxable year based on the taxpayer's filing status and adjusted gross income as follows:

(1) for surviving spouses and married individuals filing joint returns:

If adjusted gross income is:	The following percent of medical care expenses paid may be deducted:
Not over $30,000	25 percent
More than $30,000 but not more than $70,000	15 percent
Over $70,000	10 percent;

(2) for single individuals and married individuals filing separate returns:

If adjusted gross income is:	The following percent of medical care expenses paid may be deducted:
Not over $15,000	25 percent
More than $15,000 but not more than $35,000	15 percent
Over $35,000	10 percent; and

(3) for heads of household:

If adjusted gross income is:	The following percent of medical care expenses paid may be deducted:
Not over $20,000	25 percent
More than $20,000 but not more than $50,000	15 percent
Over $50,000	10 percent.

C. As used in this section:

(1) "dependent" means "dependent" as defined in Section 152 of the Internal Revenue Code;

(2) "health care facility" means a hospital, outpatient facility, diagnostic and treatment center, rehabilitation center, free-standing hospice or other similar facility at which medical care is provided;

(3) "medical care" means the diagnosis, cure, mitigation, treatment or prevention of disease or for the purpose of affecting any structure or function of the body;

(4) "medical care expenses" means amounts paid for:

(a) the diagnosis, cure, mitigation, treatment or prevention of disease or for the purpose of affecting any structure or function of the body, excluding cosmetic surgery, if provided by a physician or in a health care facility;

(b) prescribed drugs or insulin;

(c) qualified long-term care services as defined in Section 7702B(c) of the Internal Revenue Code;

(d) insurance covering medical care, including amounts paid as premiums under Part B of Title 18 of the Social Security Act or for a qualified long-term care insurance contract defined in Section 7702B(b) of the Internal Revenue Code, if the insurance or other amount is paid from income included in the taxpayer's adjusted gross income for the taxable year;

(e) nursing services, regardless of where the services are rendered, if provided by a practical nurse or a professional nurse licensed to practice in the state pursuant to the Nursing Practice Act;

(f) specialized treatment or the use of special therapeutic devices if the treatment or device is prescribed by a physician and the patient can show that the expense was incurred primarily for the prevention or alleviation of a physical or mental defect or illness; and

(g) care in an institution other than a hospital, such as a sanitarium or rest home, if the principal reason for the presence of the person in the institution is to receive the medical care available; provided that if the meals and lodging are furnished as a necessary part of such care, the cost of the meals and lodging are "medical care expenses";

(5) "physician" means a medical doctor, osteopathic physician, dentist, podiatrist, chiropractic physician or psychologist licensed or certified to practice in New Mexico; and

(6) "prescribed drug" means a drug or biological that requires a prescription of a physician for its use by an individual.

(Laws 2015 S.S., Chapter 2, Section 3; Applicable to taxable years beginning on or after January 1, 2015)

7-2-38. DEDUCTION; INCOME SET ASIDE FOR FUTURE DISTRIBUTION FROM AN ESTATE OR TRUST TO A NONRESIDENT INDIVIDUAL.

A. Before January 1, 2025, a taxpayer that is an estate or trust may claim a deduction from net income in the amount equal to income, excluding income derived from real property located in New Mexico, mineral, oil and gas interests located in New Mexico, water rights located in New Mexico and any other income allocated or apportioned to New Mexico, set aside for future distribution to a nonresident individual beneficiary as provided in the estate's or trust's governing instrument.

B. The purpose of the deduction allowed by this section is to increase estate and trust business in New Mexico.

C. Concerning the deduction allowed by this section, in determining:

(1) the extent to which income of an estate or trust is set aside for future distribution to a nonresident individual beneficiary, if all or part of the estate's or trust's federal taxable income, regardless of whether it is added to the estate or trust corpus for estate or trust accounting purposes, is distributable in future taxable years to or for the benefit of a named individual beneficiary or a first-named class of individual beneficiaries and if, on the last day of the estate's or trust's taxable year, one or more named individual beneficiaries or one or more members of the first-named class of individual beneficiaries is living, then the portion of the federal taxable income considered set aside for future distribution to:

(a) a named individual beneficiary is determined by: 1) ascertaining the share or shares of each named individual beneficiary as if the estate or trust had terminated on the last day of the taxable year and then ascertaining the portion of that income realized by the estate or trust during the taxable year while the beneficiary was a nonresident; and 2) presuming that the beneficiary was living and residing in the state in which the putative parents resided during the taxable year; and

(b) a first-named class of individual beneficiaries is determined by: 1) ascertaining the members of the class and the share of each member as if the estate or trust had terminated on the last day of the taxable year and then ascertaining the portion of that income of each share realized by the estate or trust while the member was a nonresident; and 2) presuming that the member was living and residing with the person the relationship to whom defines membership in the class;

(2) the share of income of each beneficiary of an estate or trust in the federal taxable income, it is presumed that the discretion of a person over the distribution of that income, regardless of whether the person acts in a fiduciary capacity or is subject to a standard, has not been exercised, unless that discretion is irrevocably exercised as of the last day of the taxable year; and

(3) the time federal taxable income is realized:

(a) interest income is considered realized when payable;

(b) dividend income is considered realized on the day the dividend is payable;

(c) gains and losses from the sale or exchange of property are considered realized or deductible, as appropriate, on the settlement date of the sale or the effective date of the exchange; and

(d) commissions on income or principal are deemed deductible on the date charged.

D. A taxpayer allowed a deduction in accordance with this section shall report the amount of the deduction separately and as required by the department.

E. Beginning in 2020, the department shall compile an annual report on the deduction allowed by this section that includes the number of taxpayers that claimed the deduction, the aggregate amount of deductions claimed and other information necessary to evaluate the deduction's effectiveness. The department shall present the report to the revenue stabilization and tax policy committee and the legislative finance committee with an analysis of the effectiveness and cost of the deduction and whether the deduction is fulfilling its purpose.
(Laws 2019, Chapter 264, Section 1; Applicable to taxable years beginning on or after January 1, 2019)

7-2-39. DEDUCTION FROM NET INCOME FOR CERTAIN DEPENDENTS.

A. As long as the exemption amount pursuant to Section 151 of the Internal Revenue Code means zero, a taxpayer who is not a dependent of another individual and files a return as a head of household or married filing jointly may claim a deduction from net income in an amount equal to the product of four thousand dollars ($4,000) multiplied by the difference between the number of dependents claimed on the taxpayer's return and one.

B. A taxpayer allowed a deduction pursuant to this section shall report the amount of the deduction to the department in a manner required by the department.

C. The deduction provided by this section shall be included in the tax expenditure budget pursuant to Section 7-1-84 NMSA 1978, including the annual aggregate cost of the deduction.

D. As used in this section, "dependent" means "dependent" as defined in Section 152 of the Internal Revenue Code.
(Laws 2025, Chapter 130, Section 51)

7-2-40. DEDUCTION; INCOME FROM LEASING A LIQUOR LICENSE.

A. Prior to January 1, 2026, a taxpayer who is a liquor license lessor and who held the license on June 30, 2021 may claim a deduction from net income in an amount equal to the gross receipts from sales of alcoholic beverages made by each liquor license lessee in an amount, if the liquor license is a dispenser's license and sales of alcoholic beverages for consumption off premises are less than fifty percent of total alcoholic beverage sales, not to exceed fifty thousand dollars ($50,000) for each of four taxable years.

B. Married individuals filing separate returns for a taxable year for which they could have filed a joint return may each claim only one-half of a deduction provided by this section that would have been claimed on a joint return.

C. A taxpayer may claim the deduction provided by this section in proportion to the taxpayer's ownership interest if the taxpayer owns an interest in a business entity that is taxed for federal income tax purposes as a partnership or limited liability company and that business entity has met all of the requirements to be eligible for the deduction. The total deduction claimed in the aggregate by all members of the partnership or association with respect to the deduction shall not exceed the amount of the deduction that could have been claimed by a sole owner of the business.

D. A taxpayer allowed a deduction pursuant to this section shall report the amount of the deduction to the department in a manner required by the department.

E. The deduction provided by this section shall be included in the tax expenditure budget pursuant to Section 7-1-84 NMSA 1978, including the annual aggregate cost of the deduction.

F. As used in this section:

(1) "alcoholic beverage" means alcoholic beverage as defined in the Liquor Control Act;

(2) "dispenser's license" means a license issued pursuant to the provisions of the Liquor Control Act allowing the licensee to sell, offer for sale or have in the person's possession with the intent to sell alcoholic beverages both by the drink for consumption on the licensed premises and in unbroken packages, including growlers, for consumption and not for resale off the licensed premises;

(3) "growler" means a clean, refillable, resealable container that has a liquid capacity that does not exceed one gallon and that is intended and used for the sale of beer, wine or cider;

(4) "liquor license" means a dispenser's license issued pursuant to Section 60-6A-3 NMSA 1978 or a dispenser's license issued pursuant to Section 60-6A-12 NMSA 1978 issued prior to July 1, 2021;

(5) "liquor license lessee" means a person that leases a liquor license from a liquor license lessor; and

(6) "liquor license lessor" means a person that leases a liquor license to a third party."

(Laws 2025, Chapter 130, Section 52)

7-2-41. DEDUCTION; SCHOOL SUPPLIES PURCHASED BY A PUBLIC SCHOOL TEACHER.

A. A taxpayer who is not a dependent of another individual and is a public school teacher may claim a deduction from net income in an amount equal to the costs of school supplies purchased by the public school teacher in a taxable year, not to exceed:

(1) for a taxable year beginning on January 1, 2024 and prior to January 1, 2025, five hundred dollars ($500); and

(2) for a taxable year beginning on January 1, 2025 and prior to January 1, 2029, one thousand dollars ($1,000).

B. To claim a deduction pursuant to this section, a taxpayer shall submit to the department information required by the secretary establishing that the taxpayer is eligible to claim a deduction pursuant to this section.

C. A taxpayer allowed a deduction pursuant to this section shall report the amount of the deduction to the department in a manner required by the department.

D. The deduction provided by this section shall be included in the tax expenditure budget pursuant to Section 7-1-84 NMSA 1978, including the annual aggregate cost of the deduction.

E. As used in this section:

(1) "public school teacher" means a person who is licensed as a teacher pursuant to the Public School Code and who teaches at a public school, as that term is defined in the Public School Code; and

(2) "school supplies" means items purchased by a public school teacher and used by the students of the teacher in the teacher's classroom for educational purposes, including notebooks, paper, writing instruments, crayons, art supplies, rulers, maps and globes, but not including computers or other similar digital devices, watches, radios, digital music players,

headphones, sporting equipment, portable or desktop telephones, cellular telephones or other electronic communication devices, copiers, office equipment, furniture or fixtures.
(Laws 2025, Chapter 130, Section 53)