TRD Publication 3.3 NMAC

Regulations pertaining to the

INCOME TAX ACT

Sections 7-2-1 through 7-2-40 NMSA 1978

Revised July 2023
TRD Publication 3.3 NMAC
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(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 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)

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, 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;

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

(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 federally allowable qualified higher education expenses, set out in Section 529 of the Internal Revenue Code, including other expenses allowed pursuant to that section as qualified expenses; 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 that began prior to January 1, 1991, an amount equal to the sum of:

(a) net operating loss carryback deductions to that year from taxable years beginning prior to January 1, 1991 claimed and allowed, as provided by the Internal Revenue Code; and

(b) net operating loss carryover deductions to that year claimed and allowed;

(7) for taxable years beginning on or after January 1, 1991 and prior to 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 from a taxable year beginning on or after January 1, 1991 and prior to January 1, 2013 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 four succeeding taxable years in turn until the net operating loss carryover is exhausted for any net operating loss carryover from a taxable year prior to January 1, 2013; in no event shall a net operating loss carryover from a taxable year beginning 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;

(8) 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

(9) 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), (7) or (8) 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
(Laws 2023, Chapter 17, 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.
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.

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 purposes 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.

3.3 NMAC
(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)
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.
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 Maes") 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.
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 3.3 NMAC
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 3.3 NMAC

(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.


(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)

7-2-5.2. 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:
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:
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:
Not over $18,000 $8,000
Over $18,000 but not over $19,500 $7,000
### 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 = $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: $16,000
   - 10% x $16,000 = $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]
7-2-5.4. EXEMPTION--ADOPTED SPECIAL NEEDS CHILD.--

A. Any individual who has adopted a special needs child on or after January 1, 1988 may claim an exemption for each such child in an amount specified in Subsection B of this section not to exceed two thousand five hundred dollars ($2,500) of income includable, except for this exemption, in net income until the taxable year in which the special needs child may no longer be claimed as a dependent for federal income tax purposes. Individuals having income both within and without this state shall apportion this exemption in accordance with regulations of the secretary.

B. For single individuals, heads of household and married individuals filing joint returns, for any taxable year beginning on or after January 1, 1988, the amount of the exemption under this section shall be two thousand five hundred dollars ($2,500). For married individuals filing separate returns, for any taxable year beginning on or after January 1, 1988, the amount of the exemption under this section shall be one thousand two hundred fifty dollars ($1,250).

C. As used in this section, "special needs child" means an individual under eighteen years of age who is certified by the human services department or a licensed child placement agency as meeting the definition of a "difficult to place child" in Subsection B of Section 32A-5-44 NMSA 1978; provided, however, that no such classification shall be based upon physical or mental handicap or emotional disturbance that is less than moderately disabling.

(Laws 1995, Chapter 11, Section 1)
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)
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)
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)

*** REPEALED EFFECTIVE JUNE 16, 2023
BY LAWS 2023, CHAPTER 159, SECTION 4 ***

7-2-5.12. EXEMPTION -- INCOME SUBJECT TO ENTITY-LEVEL TAX.—Net income subject to the entity-level tax is exempt from income tax.
(Laws 2022, Chapter 46, Section 1 – Applicable to taxable years beginning on or after January 1, 2022)
7-2-5.13. EXEMPTION--ARMED FORCES RETIREMENT PAY.--

A. An individual who is an armed forces retiree may claim an exemption in the following amounts of military retirement pay includable, except for this exemption, in net income:

   (1) for taxable year 2022, ten thousand dollars ($10,000);
   (2) for taxable year 2023, twenty thousand dollars ($20,000);
   and
   (3) for taxable years 2024 through 2026, thirty thousand dollars ($30,000).

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 2022, Chapter 47, Section 6)
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)
7-2-7. 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, 2008:

A. For married individuals filing separate returns:

<table>
<thead>
<tr>
<th>If the taxable income is:</th>
<th>The tax shall be:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Not over $4,000</td>
<td>1.7% of taxable income</td>
</tr>
<tr>
<td>Over $4,000 but not over $8,000</td>
<td>$68.00 plus 3.2% of excess over $4,000</td>
</tr>
<tr>
<td>Over $8,000 but not over $12,000</td>
<td>$196 plus 4.7% of excess over $8,000</td>
</tr>
<tr>
<td>Over $12,000</td>
<td>$384 plus 4.9% of excess over $12,000</td>
</tr>
</tbody>
</table>

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

<table>
<thead>
<tr>
<th>If the taxable income is:</th>
<th>The tax shall be:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Not over $8,000</td>
<td>1.7% of taxable income</td>
</tr>
<tr>
<td>Over $8,000 but not over $16,000</td>
<td>$136 plus 3.2% of excess over $8,000</td>
</tr>
<tr>
<td>Over $16,000 but not over $24,000</td>
<td>$392 plus 4.7% of excess over $16,000</td>
</tr>
<tr>
<td>Over $24,000</td>
<td>$768 plus 4.9% of excess over $24,000</td>
</tr>
</tbody>
</table>

C. For single individuals and for estates and trusts:

<table>
<thead>
<tr>
<th>If the taxable income is:</th>
<th>The tax shall be:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Not over $5,500</td>
<td>1.7% of taxable income</td>
</tr>
<tr>
<td>Over $5,500 but not over $11,000</td>
<td>$93.50 plus 3.2% of excess over $5,500</td>
</tr>
<tr>
<td>Over $11,000 but not over $16,000</td>
<td>$269.50 plus 4.7% of excess over $11,000</td>
</tr>
<tr>
<td>Over $16,000</td>
<td>$504.50 plus 4.9% of excess over $16,000</td>
</tr>
</tbody>
</table>

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 2005, Chapter 104, Section 4)
Over $315,000 $15,027 plus 5.9% of excess over $315,000.

C. For single individuals and for estates and trusts:

<table>
<thead>
<tr>
<th>If the taxable income is:</th>
<th>The tax shall be:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Not over $5,500</td>
<td>1.7% of taxable income</td>
</tr>
<tr>
<td>Over $5,500 but not over $11,000</td>
<td>$93.50 plus 3.2% of excess over $5,500</td>
</tr>
<tr>
<td>Over $11,000 but not over $16,000</td>
<td>$269.50 plus 4.7% of excess over $11,000</td>
</tr>
<tr>
<td>Over $16,000 but not over $210,000</td>
<td>$504.50 plus 4.9% of excess over $16,000</td>
</tr>
<tr>
<td>Over $210,000</td>
<td>$10,010.50 plus 5.9% of excess over $210,000.</td>
</tr>
</tbody>
</table>

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 2019, Chapter 270, Section 12 – Applicable to taxable years beginning on or after January 1, 2021 – Contingent effective date based on certification prior to February 19, 2021)

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 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. TAX REBATE--2005 TAXABLE YEAR.--

A. Except as otherwise provided in this section, any resident who files an individual New Mexico income tax return and who is not a dependent of another individual is entitled to a tax rebate during the 2005 taxable year for a portion of state and local taxes to which the person has been subject during the 2005 taxable year, even if the resident has no income taxable pursuant to the Income Tax Act.

B. 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; provided that, in the case of a husband and wife who have filed a joint return where only one individual is a New Mexico resident, the number of exemptions shall be reduced by one.

C. Except as otherwise provided in Subsection D of this section, the tax rebate provided for in this section is allowed for the amount shown in the following table:

<table>
<thead>
<tr>
<th>Adjusted Gross Income Is:</th>
<th>And the total number of exemptions is:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Over $0</td>
<td>But Not $10,000</td>
</tr>
<tr>
<td>Over 10,000</td>
<td>$139 179 214 244 269 289</td>
</tr>
<tr>
<td>Over 20,000</td>
<td>124 164 189 214 234 249</td>
</tr>
<tr>
<td>Over 35,000</td>
<td>109 139 164 184 199 209</td>
</tr>
<tr>
<td>Over 45,000</td>
<td>94 119 139 154 164 169</td>
</tr>
<tr>
<td>Over 60,000</td>
<td>79 104 124 139 149 154</td>
</tr>
<tr>
<td></td>
<td>64 84 99 109 114 119</td>
</tr>
</tbody>
</table>

D. If a resident's adjusted gross income is less than or equal to zero, the resident is entitled to a rebate in the amount shown in the first row of the table appropriate for the resident's number of exemptions.

E. Except as otherwise provided in this section, the secretary shall make an advance payment of the tax rebate provided for in this section not later than November 15, 2005 to each resident who filed a 2004 New Mexico personal income tax return. Advance payment amounts shall be based on the number of federal exemptions allowable for federal income tax purposes on the 2004 New Mexico personal income tax return of the resident for whom a rebate is allowed pursuant to this section and on the federal adjusted gross income reported by that resident on the same return. A resident who does not receive an advance payment may claim the tax rebate provided for in this section on that resident's 2005 New Mexico personal income tax return based on the federal adjusted gross income and on the number of federal exemptions allowable for federal income tax purposes reported on that return.

F. The department shall not make an advance payment of the tax rebate provided for in this section to a person who:

(1) was an inmate of a public institution for more than six
months during the 2004 taxable year; or
(2) was not a resident of New Mexico on the last day of the 2004 taxable year.

G. The department shall not allow a tax rebate provided in this section to a person who claims the rebate on that person's 2005 personal income tax return, but:

(1) was an inmate of a public institution for more than six months during the 2005 taxable year; or
(2) was not a resident of New Mexico on the last day of the 2005 taxable year.

H. The secretary may adopt regulations necessary to administer the provisions of this section.

I. For purposes of this section, "dependent" means "dependent" as defined by Section 152 of the Internal Revenue Code, 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 2005 1st S.S., Chapter 3, Section 2)
7-2-7.3. EXEMPTION--2005 TAXABLE YEAR REBATE.--The tax rebate made for the 2005 taxable year pursuant to this 2005 act is exempt from state income tax.
   (Laws 2005 1st S.S., Chapter 3, Section 2)

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)

7-2-9. 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)
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:

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Deduction for married persons filing jointly</td>
<td>$4,000</td>
</tr>
<tr>
<td>New Mexico itemized deductions</td>
<td>$1,500</td>
</tr>
<tr>
<td>Sub-Total</td>
<td>$5,500</td>
</tr>
<tr>
<td>30% x $5,500</td>
<td>$1,650</td>
</tr>
</tbody>
</table>

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.

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:

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal exemption amount per 7-2-2N(6) NMSA 1978</td>
<td>$2,000</td>
</tr>
<tr>
<td>Exemptions allowed for federal purposes</td>
<td>$6,000</td>
</tr>
<tr>
<td>Sub-Total</td>
<td>$6,000</td>
</tr>
<tr>
<td>20% x $6,000</td>
<td>$1,200</td>
</tr>
</tbody>
</table>

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]
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

3.3 NMAC
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.--

A. 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. Except as provided in Subsection B of this section, 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.

B. When the department approves electronic media for use by a taxpayer whose taxable year is a calendar year, the taxpayer who uses electronic media for both filing and payment must submit the required return and the tax imposed on residents and individuals under the Income Tax Act on or before the last day of the month in which the resident's or individual's federal income tax return is originally due for the taxable year. The due date provided in this subsection does not apply to residents or individuals who have received a filing extension from New Mexico or an automatic extension from the federal internal revenue service for the same taxable year.

(Laws 2016, Chapter 15, Section 1)

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]
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 3.3 NMAC
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]

3.3.12.14 - [RESERVED]
[8/30/95, 1/15/97, 12/15/98, 7/30/99; 3.3.12.14 NMAC - Rn & A, 3 NMAC 3.12.14, 12/14/00, A, 10/31/05; Repealed, 12/30/10]
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

(1) the credit authorized by Section 7-2-13 NMSA 1978 for income taxes paid another state or

(2) the credit authorized by Section 7-2-19 NMSA 1978 for income taxes paid another state.

(Laws 1990, Chapter 23, Section 1)
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:

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<td>170</td>
<td>195</td>
</tr>
<tr>
<td>24,500</td>
<td></td>
<td>65</td>
<td>90</td>
<td>115</td>
<td>140</td>
<td>155</td>
<td>180</td>
</tr>
<tr>
<td>26,000</td>
<td></td>
<td>55</td>
<td>80</td>
<td>105</td>
<td>130</td>
<td>140</td>
<td>170</td>
</tr>
<tr>
<td>27,500</td>
<td></td>
<td>50</td>
<td>75</td>
<td>100</td>
<td>115</td>
<td>130</td>
<td>155</td>
</tr>
<tr>
<td>29,500</td>
<td></td>
<td>40</td>
<td>55</td>
<td>80</td>
<td>100</td>
<td>115</td>
<td>130</td>
</tr>
<tr>
<td>31,000</td>
<td></td>
<td>35</td>
<td>50</td>
<td>65</td>
<td>80</td>
<td>100</td>
<td>105</td>
</tr>
<tr>
<td>32,500</td>
<td></td>
<td>25</td>
<td>40</td>
<td>50</td>
<td>65</td>
<td>80</td>
<td>90</td>
</tr>
<tr>
<td>34,000</td>
<td></td>
<td>15</td>
<td>30</td>
<td>40</td>
<td>55</td>
<td>65</td>
<td>75</td>
</tr>
</tbody>
</table>

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)
7-2-14.3. 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:

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

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)
7-2-18. 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

<table>
<thead>
<tr>
<th>Taxpayer's Modified Gross Income</th>
<th>Property Tax Liability</th>
</tr>
</thead>
<tbody>
<tr>
<td>Over $0</td>
<td>Over $20</td>
</tr>
<tr>
<td>$1,000</td>
<td>$25</td>
</tr>
<tr>
<td>$2,000</td>
<td>$30</td>
</tr>
<tr>
<td>$3,000</td>
<td>$35</td>
</tr>
</tbody>
</table>
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**

<table>
<thead>
<tr>
<th>Taxpayer's Modified Gross Income But Not Over</th>
<th>Property Tax Liability</th>
</tr>
</thead>
<tbody>
<tr>
<td>Over $ 0</td>
<td>$ 1,000</td>
</tr>
<tr>
<td>1,000</td>
<td>2,000</td>
</tr>
<tr>
<td>2,000</td>
<td>3,000</td>
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<td>3,000</td>
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<td>23,000</td>
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<tr>
<td>23,000</td>
<td>24,000</td>
</tr>
</tbody>
</table>
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)
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]
7-2-18.4. QUALIFIED BUSINESS FACILITY REHABILITATION CREDIT -- INCOME TAX CREDIT. --

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

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

C. No credit may be claimed or allowed pursuant to the provisions of this section for any costs incurred for a restoration, rehabilitation or renovation project for which a credit may be claimed pursuant to the provisions of Section 7-2-18.2 or Section 7-9A-1 NMSA 1978.

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

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 taxable years; provided, the total tax credits claimed under this section shall not exceed fifty thousand dollars ($50,000) for any single restoration, rehabilitation or renovation project for a qualified business facility.

G. As used in this section:

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

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

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

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

(Laws 1994, Chapter 115, Section 1)

3.3.13.11 - QUALIFIED BUSINESS FACILITY REHABILITATION CREDIT

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

(1) a building listed on the official New Mexico register of cultural properties as those terms are defined in section 1 of the cultural properties review committee Rule 84-1; or

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

B. No qualified business facility rehabilitation credit allowed for costs qualifying for credit under Investment Credit Act. Any expenditure by an owner of a qualified business facility that would qualify for the investment credit provided by the Investment Credit Act may not also be used as the basis for claiming the credit provided in Section 7-2-18.4 NMSA 1978.

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

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

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

(3) building permits and fees;

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

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

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

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

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

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

(10) upgrade of utilities to meet current codes, including plumbing, mechanical and electrical;
(11) upgrade of utilities connections, including water, gas, electricity and telecommunications;
(12) exterior lighting, security lighting, light fixtures, and alarm systems;
(13) repair or replacement of existing bathroom plumbing fixtures;
(14) New Mexico gross receipts and compensating taxes; and
(15) liability, fire, and workers' compensation insurance premiums during the time of work on the project.

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

E. **"Single project" defined.**
(1) Except as otherwise provided in this subsection (3.3.13.11E NMAC), credit for restoring, rehabilitating or renovating a qualified business facility may be claimed only once for a building, although the actual period of time during which that restoration, rehabilitation or renovation occurs may be as long as three consecutive, calendar years.
(2) If a qualified business facility has been restored, rehabilitated or renovated and has been put into service by a person in the manufacturing, distribution or service industry immediately following the restoration, rehabilitation or renovation, the person claims and is granted a credit under either Section 7-2-18.4 or Section 7-2A-15 NMSA 1978 and the qualified business facility is subsequently taken out of service by that person and remains vacant for twenty-four consecutive calendar months, a credit may be claimed for additional costs of restoration, rehabilitation or renovation for that building, provided all other requirements of Section 7-2-18.4 NMSA 1978 are met.

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

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

G. Filing requirements.

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

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

H. Record retention requirements.

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

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

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

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

(2) An individual claiming the qualified business facility rehabilitation credit derived from a partnership, joint venture or limited liability company shall claim the credit in the same manner as specified in Subsections F and G of Section 3.3.13.11 NMAC but shall also provide a schedule listing the names, addresses and social security numbers or federal employer identification numbers of all partners in the partnership or joint venture or the shareholders in the limited liability company, the pro rata share of the credit of each partner or shareholder and the federal employer identification number and New Mexico CRS identification number, if any, of the partnership, joint venture or limited liability company.

J. S-corporation claim for qualified business facility rehabilitation credit.

(1) A shareholder in an S-corporation may claim a credit against the individual's New Mexico personal income tax due in an amount equal to the individual's pro rata share of the qualified business facility rehabilitation credit of the S-corporation. The total aggregate credit for all shareholders shall not exceed an amount equal to one half the cost of restoration, rehabilitation or renovation or fifty thousand dollars ($50,000), whichever is less, for a single restoration, rehabilitation or renovation project for any qualified business facility.

(2) An individual claiming the qualified business facility rehabilitation credit derived from an S-corporation shall claim the credit in the same manner as specified in 3.3 NMAC
Subsections F and G of Section 3.3.13.11 NMAC but shall also provide a schedule listing the names, addresses and social security numbers of the shareholders in the S-corporation, the prorata share of the credit of each shareholder and the S-corporation's federal employer identification number and New Mexico CRS identification number, if any.

K. **Total claimable in a year may exceed $50,000.**
   
   (1) No individual may claim nor may the department allow a credit in excess of $50,000 for any single project. An individual, however, may be involved in several different approved projects. If the individual's share of allowable credits from the several projects exceeds $50,000, the individual may claim and the department may allow an aggregate credit amount which exceeds $50,000.
   
   (2) Example: An individual owns a qualified business facility and is also a shareholder in an S-corporation and in a limited liability company, both of which also own qualified business facilities. All three undertake restoration, renovation or rehabilitation projects on their respective buildings within the same year. The individual earns credits of $40,000 from the individual's own building, and $20,000 and $12,000 shares from the other two. The individual may claim a credit equal to the sum of the individual's share from the three projects, or $72,000. If, however, the $72,000 exceeded the individual's income tax liability before application of this credit, then the excess would have to be carried into succeeding taxable years.

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

[2/9/95, 1/15/97; 3.3.13.11 NMAC - Rn & A, 3 NMAC 3.13.11, 12/14/00]
7-2-18.5. WELFARE-TO-WORK TAX CREDIT.--

A. Any taxpayer who files an individual New Mexico income tax return and is not a dependent of another taxpayer and is entitled to claim the federal welfare-to-work credit provided by 26 U.S.C. Section 51A with respect to a state-qualified employee in a state-qualified job may take a tax credit equal to fifty percent of the amount of the welfare-to-work credit claimed and allowed under 26 U.S.C. Section 51A with respect to that employee in that job.

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

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

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

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

4) no state-qualified employee shall be employed or assigned:
   a) when any other individual is on layoff from the same or any substantially equivalent job;
   b) if the employer has terminated the employment of any regular employee or otherwise caused an involuntary reduction of its work force with the effect of filling the vacancy so created with a state-qualified employee; or
   c) to any position at a particular work site when there is an ongoing strike or lockout at that particular work site;

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

6) employers shall:
   a) maintain health, safety and working conditions not less than those of comparable jobs offered by the employer; and
   b) maintain standard and customary entry-level wages and benefits and apply historical and normal increases in wages and benefits appropriate for experience and training of the state-qualified employee.

C. For the purposes of this section:

1) "high-unemployment county" means a county in which the unemployment rate as reported by the labor department exceeds ten percent in
six or more months of the calendar year preceding the year for which the tax credit provided by this section is claimed;

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

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

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

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

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

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

F. 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 credit provided by this section that would have been allowed on a joint return.

G. A taxpayer who otherwise qualifies may claim his pro rata share of the tax credit provided by this section with respect to state-qualified employees employed by a partnership or other business association of which the taxpayer is a member. The total tax credit claimed by all members of the partnership or association shall not exceed the amount of tax credit provided pursuant to Subsection A of this section with respect to each state-qualified employee for which the credit is allowed.

H. The tax credit provided by this section 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 three consecutive taxable years.

(Laws 1998, Chapter 97, Section 2)
7-2-18.7. TAX REBATE OF PROPERTY TAX PAID ON PROPERTY ELIGIBLE FOR DISABLED VETERAN EXEMPTION--REFUND--LIMITATION.--

   A. Any resident who files an individual New Mexico income tax return and paid property tax for the 1999 property tax year on property eligible for the property tax exemption authorized by Article 8, Section 15 of the constitution of New Mexico may claim a tax rebate for the amount of property tax paid.

   B. The tax rebate provided for in this section may be deducted from the taxpayer's New Mexico income tax liability for taxable year 2000. If the tax rebate exceeds the taxpayer's income tax liability, the excess shall be refunded to the taxpayer.

   C. The rebate provided for in this section may be claimed only on a return filed for taxable year 2000.

   D. A husband and wife who file separate returns for taxable year 2000 and could have filed a joint return for taxable year 2000 may each claim only one-half of the tax rebate that would have been allowed on the joint return.

   (Laws 2000, Chapter 78, Section 1)
7-2-18.8. CREDIT--CERTAIN ELECTRONIC EQUIPMENT.--

A. A taxpayer who files an individual New Mexico income tax return, who is not a dependent of another individual, is licensed by the state to sell cigarettes, other tobacco products or alcoholic beverages and has purchased and has in use equipment that electronically reads identification cards to verify age, may claim a one-time credit in an amount equal to three hundred dollars ($300) for each business location the taxpayer has such equipment in use.

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

C. A 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 provided in this section that would have been allowed on a joint return.

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

(Laws 2001, Chapter 73, Section 1)
7-2-18.9. CREDIT FOR PRODUCED WATER.—

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

1. the operator delivers the water to the interstate stream commission at the Pecos river in compliance with the applicable requirements of New Mexico’s Water Quality Act, New Mexico’s water quality control commission regulations and federal clean water acts;
2. the operator delivers the water solely in a manner approved by the interstate stream commission to contribute to delivery obligations pursuant to the Pecos River Compact; and
3. upon delivery to the interstate stream commission at the Pecos river, title is transferred to the interstate stream commission, which shall indemnify the operator from future liability.

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

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

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

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

(Laws 2002, Chapter 91, Section 1)
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 that is identified in the deed of conservation easement that contains existing structures and activities or will contain future structures and activities that are for the grantor's continued use of the property but that are prohibited elsewhere within the conservation easement.

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

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

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

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

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

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

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

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

N. “Pass-through entity" means a business association other than a sole proprietorship; an estate or trust; a corporation, limited liability company, partnership or other entity not a sole proprietorship taxed as a corporation for federal income tax purposes for the taxable year; or a partnership that is organized as an investment partnership in which the partners' income is derived solely from interest, dividends and sales of securities.

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

P. "Qualified appraisal" means a qualified appraisal as defined in 26 C.F.R. section 1.170A-13(c)(3) or subsequent amendments and does not use the development approach as the sole means of determining fair market value. The appraisal for a conservation easement or restriction shall state whether the donation increases the value of other property the donor or a related person owns. In accordance with 26 C.F.R. section 1.170A-14(h)(3)(i), if the donation increases the value of other property the donor or a related person owns the appraisal shall reflect the 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-13(c)(5) or subsequent amendments and who is a certified general real estate appraiser.

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

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

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

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

[3.13.20.7 NMAC - Rp, 3.13.20.7 NMAC, 6-16-2008; A, 12-30-2010; A, 2/12/2016]

3.13.20.8 - GENERAL PROVISIONS

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

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

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

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

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

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

G. For donations made prior to January 1, 2008, a taxpayer that owns an interest in the donated land or interest in land may receive a land conservation incentives tax credit worth the lesser of $100,000 or the taxpayer's proportionate share, as determined by the taxpayer's ownership interest in the donated land or interest in land, of 50 percent of the donated land's or interest in land's fair market value. For donations made on or after January 1, 2008, a taxpayer that owns an interest in the donated land or interest in land may receive a land conservation incentives tax credit worth the lesser of $250,000 or the taxpayer's proportionate share, as determined by the taxpayer's ownership interest in the donated land or interest in land, of 50 percent of the donated land or interest in land's fair market value. No matter the number of taxpayers that the donated land or interest in land has, the total land conservation incentives tax credit all taxpayers receive for the donated land or interest in land cannot exceed 50 percent of the donated land's or interest in land's fair market value. Therefore, if the applicant conveyed the donation on or after January 1, 2008, and there are 10 taxpayers that have an equal interest in donated land or interest in land that is worth $2,000,000, each taxpayer's land conservation incentives tax credit would be limited to $100,000.

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

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

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

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

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

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

N. A land conservation incentives tax credit that a pass-through tax entity claims may be used either by the pass-through tax entity if it is the tax filer on behalf of the pass-through tax entity or by the member, manager, partner, shareholder or beneficiary, as applicable, in proportion to the interest in the pass-through tax entity if the income, deductions and tax liability pass through to the member, manager, partner, shareholder or beneficiary. Either (1) the pass-through tax entity or (2) the member, manager, partner, shareholder or beneficiary, but not both (1) and (2) may claim the land conservation incentives tax credit for the same donation.

[3.13.20.8 NMAC - Rp, 3.13.20.8 NMAC, 6-16-2008]

3.13.20.9 - ASSESSMENT APPLICATION

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

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

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

(1) a donation assessment report that includes:
   (a) a detailed description of the donation or proposed donation including:
       (i) whether the donation or proposed donation is a fee interest in land or a less-than-fee interest in land;
       (ii) if the donation or proposed donation is a fee interest in land, in order to ensure that the conservation or preservation purpose is protected in perpetuity, a description of who holds or will hold a conservation easement that the applicant has placed or will place on the land and assurance that the conservation easement will contain a provision that the conservation restrictions run with the land in perpetuity and that any reserved use shall be consistent with the conservation or preservation purpose and that separate donees will hold the fee interest and conservation easement;
       (iii) the donation or proposed donation's conservation or preservation purpose and how the donation or proposed donation protects that purpose in perpetuity;
       (iv) significant natural or cultural resources present on the property; and
       (v) a description of any water rights associated with the property and whether the conservation easement or deed requires or will require any water rights associated with the property;
   (b) the current property characteristics and condition with clear maps of appropriate scale to illustrate relevant details, and showing the property's location and boundaries including a survey plat if available, directions to the property, topography, relation to other properties applicant owns that are within a 10 mile radius of the property, and relation to adjacent land uses and ownership (i.e. federal, tribal, state, private, etc.) and other properties whose conservation or preservation purposes are protected in perpetuity that are adjacent to the property or within a five mile radius of the property;
   (c) the size of the property in acres;
   (d) a description of all structures existing on the property;
   (e) if a donation or proposed donation is a less-than-fee interest, a description of any building envelopes including their size and exact location and the size of the buildings allowed within each building envelope;
   (f) if a donation or proposed donation is a less-than-fee interest, a description of the reserved rights and permitted activities that the applicant has or plans to retain or a copy of the completed or draft conservation easement;
   (g) if a conservation or preservation purpose is for the preservation of...
a historically important land area, documentation that the donation meets the requirements of 26 C.F.R. section 1.170A-14(d)(5); historically important land areas include an independently significant land area that meets the national register criteria for evaluation in 36 C.F.R section 60.4, a land area (including related historic resources) within a registered historic district including a building on the land area that can reasonably be considered as contributing to the district's significance and a land area adjacent to a property listed individually in the national register of historic places where the land area's physical or environmental features contribute to the property's historic or cultural integrity;

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

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

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

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

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

(m) if a conservation or preservation purpose is for the protection of agricultural land, a detailed description of the property's crop or animal production potential, documentation that the portion of the property claimed as agricultural land is currently subject to the special method of valuation of land used primarily for agricultural purposes as described in NMSA 1978, Section 7-36-20 (i.e., classified as either irrigated agricultural land, dryland agricultural land or grazing land under Paragraph (2) of Subsection F of 3.6.5.27 NMAC as shown on the statement of value issued by the county in which the land is located) and a description of how the conservation easement or deed will provide for agricultural use and the continued use of any water rights;

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

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

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

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

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

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

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

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

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

E. The secretary reviews the assessment applications in consultation with the committee. The secretary initiates consultation by sending the assessment application package to the committee members for review and comment or by calling a meeting of the committee. The secretary shall accept assessment application packages on a rolling basis or not fewer than three times per year spaced throughout the year, the deadlines for which shall be published in advance on the energy, minerals and natural resources department’s website. The committee shall meet not fewer than three times per year (within approximately 45 days after a set deadline for assessment application package submittals or otherwise spaced throughout the year) to consider timely and complete assessment applications unless no assessment applications are currently pending or the limited volume of the assessment application enables the secretary to consult with the committee without the need for a formal meeting. The secretary, in consultation with the committee, shall assess the donation or proposed donation, using the factors in 3.13.20.13 NMAC, to determine if the donation or proposed donation is for a conservation or preservation purpose and will protect the conservation or preservation purpose in perpetuity and that the resources or areas contained in the donation or proposed donation are significant or important.

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

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

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

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

3.13.20.10 - APPLICATION FOR CERTIFICATION OF ELIGIBILITY

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

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

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

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

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

F. The applicant shall certify on the certification of eligibility application that none of the taxpayers listed on the certification of eligibility application is or was a subsidiary, partner, manager, member, shareholder or beneficiary of a domestic partnership, limited liability company, domestic corporation or pass-through entity that owns or has owned the land or interest in land in the five years preceding the date that the applicant conveyed the land or interest in land. If an individual and a domestic partnership, limited liability company, domestic corporation or pass-through entity are listed as owners on the deed conveying the land or interest in land, the applicant shall certify on the certification of eligibility application that the individual is not a partner, manager, member, shareholder or beneficiary of the domestic partnership, limited liability company, domestic corporation or pass-through entity. If more than one domestic partnership, limited liability company, domestic corporation or pass-through entity are listed as an owner on the deed conveying the land or interest in land, the applicant shall certify on the certification of eligibility application that none of the named entities is a subsidiary, partner, manager, member, shareholder or beneficiary of any of the other entities listed on the deed.

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

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

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

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

(4) a qualified appraisal of the land or interest in land donated that a qualified appraiser prepared showing the fair market value of the land or interest in land with a statement from the appraiser that prepared the appraisal certifying that the appraisal is a qualified appraisal and that the appraiser is a qualified appraiser; the appraisal shall not be made more than 60 days prior to the date of the donation; the appraisal shall 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 that the applicant did not donate the land or interest in land for open space for the purpose of fulfilling density requirements to obtain subdivision or building permits;

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

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

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

(10) if the applicant owns the mineral interest under the land or the interest in land, a title opinion certifying such ownership, other documentation establishing such ownership, or a report from a professional geologist that the probability of surface mining occurring on such property is so remote as to be negligible, and a provision in the conservation easement or deed that prohibits any extraction or removal of minerals by any surface mining method; methods of mining that have limited, localized negative effects on the land and that are not irremediably destructive of significant conservation interests may be allowed if the secretary finds that 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 that the probability of surface mining occurring on such property is so remote as to be negligible; the secretary may have a geologist that the state employs review the report; if the secretary finds the report unsatisfactory the secretary's letter denying certification of eligibility shall state the reasons that the report is unsatisfactory.

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

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

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

(3) to ensure the land will be used in perpetuity for the purposes of the donation, documentation in the form of a conservation easement that complies with 26 U.S.C. section 170(h) and its implementing regulations placed on the land that contains a provision in the conservation easement that the conservation restrictions run with the land in perpetuity and that any reserved use shall be consistent with the conservation or preservation purpose (separate
I. If the applicant donated a less-than-fee interest in land, the applicant shall also include the following attachments with the application package:

1. A copy of United States Internal Revenue Service Form 8283 for that donation signed by the public or private conservation agency and the appraiser who prepared the appraisal for the donation;
2. A provision in the conservation easement that identifies the donation's conservation or preservation purpose or purposes;
3. A provision in the conservation easement that provides that the conveyance of the less-than-fee interest does not and will not adversely affect contiguous landowners' existing property rights;
4. If a conservation or preservation purpose is for the conservation or preservation of land areas for outdoor recreation by or for the education of the general public, a provision in the conservation easement that provides for the general public's substantial and regular use;
5. If a conservation or preservation purpose is for the protection of a relatively natural habitat, a provision in the conservation easement that describes the habitat;
6. If a conservation or preservation purpose is for the preservation of open space pursuant to a clearly delineated federal, state or local government policy, a provision in the conservation easement identifying such policy and identifying the significant public benefit;
7. If a conservation or preservation purpose is for the preservation of open space that is not pursuant to a clearly delineated federal, state or local government policy, a provision in the conservation easement stating how the easement or restriction provides for the general public's scenic enjoyment and identifies the significant public benefit;
8. If a conservation or preservation purpose is for the property's continued use for irrigated agriculture, a provision that provides that sufficient water rights will remain with the property;
9. A provision in the conservation easement that the conservation restrictions run with the land in perpetuity;
10. A provision in the conservation easement that any reserved use shall be consistent with the conservation or preservation purpose;
11. A provision in the conservation easement that prohibits the donee from subsequently transferring the interest in land unless the transfer is to another public or private conservation agency and the donee, as a condition of the transfer, requires that the conservation or preservation purposes for which the donation was originally intended continue to be carried out;
12. A provision in the conservation easement that provides that the donation of the less-than-fee interest is a property right, immediately vested in the donee, and provides that the less-than-fee interest has a fair market value that is at least equal to the proportionate value that the conservation restriction at the time of the donation bears to the property as a whole at that time; the provision shall further provide that if subsequent unexpected changes in the conditions surrounding the property make impossible or impractical the property's continued use for conservation or preservation purposes and judicial proceedings extinguish the easement or restrictions then the donee is entitled to a portion of the proceeds from the property's subsequent sale, exchange or involuntary conversion at least equal to the perpetual conservation restriction's proportionate value;
13. If the applicant reserves rights that if exercised may impair the conservation interests associated with the property, documentation sufficient to establish the...
property's condition at the time of the donation and a provision in the conservation easement whereby the applicant agrees to notify the public or private conservation agency receiving the donation before exercising any reserved right that may adversely impact the conservation or preservation purposes; and

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

[3.13.20.10 NMAC - Rp, 3.13.20.9 NMAC, 6-16-2008; A, 12-30-2010; A, 2/12/2016]

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

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

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

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

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

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

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

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

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

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

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

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

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

3.3 NMAC
E. Resubmittal of Rejected Certification of Eligibility Applications.

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

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

F. Approval of Certification of Eligibility Applications.

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

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

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

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

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

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

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

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

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

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

D. After reviewing the applicant’s response, if any, and the appraisal bureau’s final review of the appraisal the secretary shall determine whether the information or documents the applicant has supplied satisfactorily address and resolve the specific reasons for the proposed rejection and issue a letter either rejecting the certification of eligibility application or approving the certification of eligibility application. If the secretary determines that the applicant’s response does not satisfactorily resolve the reasons for the rejection or if the appraisal bureau has issued a final unfavorable recommendation of the appraisal, the secretary shall issue a letter denying the certification of eligibility application. The secretary's letter shall state the specific reasons why the secretary rejected the certification of eligibility application.

[3.13.20.12 NMAC - N, 6-16-2008; A, 12-30-2010; A, 2/12/2016]

3.13.20.13 - FACTORS IN DETERMINING SUITABILITY FOR CERTIFICATION OF ELIGIBILITY

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

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

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

(1) property size;
(2) property condition or potential;
(3) presence of significant natural or cultural resources;
(4) property's location relative to other lands protected for conservation or
preservation purposes;

(5) current and future management and use;
(6) contribution to local, regional or state conservation or preservation objectives;
(7) terms of the conservation easement or deed;
(8) qualifications and stewardship capacity of the public or private conservation agency that holds the fee or conservation easement; and
(9) other factors affecting the property's long-term protection and viability.

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

<table>
<thead>
<tr>
<th>Ranking</th>
<th>Site Condition</th>
<th>Development</th>
<th>Uses</th>
<th>Surroundings</th>
<th>Stewardship or Monitoring</th>
</tr>
</thead>
<tbody>
<tr>
<td>Favorable</td>
<td>Site is of uniformly good condition and sufficient size to maintain the conservation or preservation purposes, assuming other favorable factors such as good potential for restoration if needed</td>
<td>Additional development of the property is specifically prohibited or additional development that is allowed is consistent with the conservation or preservation purposes</td>
<td>Allowed uses of the property are consistent with the conservation or preservation purposes</td>
<td>Surrounding land uses are entirely compatible with site conservation or preservation purposes, or site serves as a connection between other conservation lands or provides significant or important open space</td>
<td>If a fee donation, the recipient has sufficient resources as well as a formal plan to provide stewardship for the conservation or preservation purposes. If a less-than-fee donation the recipient has sufficient resources to monitor and ensure the grantor's compliance with the conservation's easement's terms.</td>
</tr>
<tr>
<td>Marginal</td>
<td>Site is of minimum size and condition to maintain the conservation or preservation purposes, assuming other</td>
<td>Additional development allowed that may impair the conservation or preservation</td>
<td>Allowed uses of the property may be incompatible for long-term maintenance of the</td>
<td>Surrounding lands uses are not consistent with site conservation or preservation purposes, and site does not</td>
<td>If a fee donation, the recipient has no formal plan and marginal capacity to provide stewardship of</td>
</tr>
</tbody>
</table>
D. The secretary evaluates each application in the context of the property's unique geographic setting and characteristics, but the secretary will not apply rigid standards relating to tract size or other factors. Instead, the secretary evaluates the donation's overall contribution to the indicated conservation or preservation purpose as well as the probability the purposes will be supported in perpetuity.

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

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

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

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

D. A tax filer who has both a carryover credit and a new credit derived from a qualified donation in the taxable year for which the tax filer is filing the return shall first apply the amount of carryover credit against the income tax liability. A tax filer may apply one or more tax credits against the liability in a given year; provided however, that the tax credits applied shall not exceed the liability for that year. If the amount of liability exceeds the carryover credit, then the tax filer may apply the current year credit against the liability.

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

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

3.13.20.15 - TRANSFER OF THE LAND CONSERVATION INCENTIVES TAX CREDIT

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

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

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

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

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

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

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

3.13.20.16 - TRANSITION PROVISIONS

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

[3.13.20.16 NMAC - N, 6-16-2008]
7-2-18.11. JOB MENTORSHIP TAX CREDIT.--

A. To encourage New Mexico businesses to hire youth participating in career preparation education programs, a taxpayer who files an individual New Mexico income tax return, who is not a dependent of another individual and who is an owner of a New Mexico business may claim a credit in an amount equal to fifty percent of gross wages paid to qualified students who are employed by the business during the taxable year for which the return is filed. The tax credit provided by this section may be referred to as the "job mentorship tax credit".

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

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

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

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

(1) a properly executed job mentorship tax credit certificate;

(2) information required by the secretary with respect to the employee's employment by the business during the taxable year for which the credit is claimed; and

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

F. The job mentorship tax credit may only be deducted from the taxpayer's New Mexico income tax liability for the taxable year. Any portion of the maximum credit provided by this section that remains unused at the end of the taxpayer's taxable year may be carried forward for three
consecutive taxable years; provided the total credits claimed under this section shall not exceed the maximum allowable pursuant to Subsection B of this section.

G. 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.

H. A taxpayer who otherwise qualifies for and claims a job mentorship tax credit for employment of qualified students by a partnership, limited partnership, limited liability company, S corporation or other business association of which the taxpayer is a member may claim a credit only in proportion to his interest in the partnership, limited partnership, limited liability company, S corporation or association. The total credit claimed by all members of the business shall not exceed the maximum credit allowable pursuant to Subsection B of this section.

I. As used in this section:

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

(2) "New Mexico business" means a partnership, limited partnership, limited liability company treated as a partnership for federal income tax purposes, S corporation or sole proprietorship that carries on a trade or business in New Mexico and that employs in New Mexico fewer than three hundred full-time employees at any one time during the taxable year; and

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

(Laws 2003, Chapter 400, Section 1)
7-2-18.12. INCOME TAX--CREDIT FOR PAYMENTS MADE TO NURSING HOMES, INTERMEDIATE CARE FACILITIES FOR THE MENTALLY RETARDED OR RESIDENTIAL TREATMENT CENTERS.—

A. A taxpayer who files an individual New Mexico income tax return and who is not a dependent of another taxpayer may claim a credit for expenses that the taxpayer paid in the taxable year for services rendered by a licensed nursing home, licensed intermediate care facility for the mentally retarded or licensed residential treatment center and that were not reimbursed by an insurer. The credit shall not exceed ten dollars ($10.00) for each day that expenses for services from the licensed nursing home, licensed intermediate care facility for the mentally retarded or licensed residential treatment center accrued.

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.

(Laws 2004, Chapter 99, Section 1)
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. SOLAR MARKET DEVELOPMENT TAX CREDIT--RESIDENTIAL AND SMALL BUSINESS SOLAR THERMAL AND PHOTOVOLTAIC MARKET DEVELOPMENT TAX CREDIT.--

A. Except as provided in Subsection C of this section, a taxpayer who files an individual New Mexico income tax return for a taxable year beginning on or after January 1, 2006 and who purchases and installs after January 1, 2006 but before December 31, 2016 a solar thermal system or a photovoltaic system in a residence, business or agricultural enterprise in New Mexico owned by that taxpayer may apply for, and the department may allow, a solar market development tax credit of up to ten percent of the purchase and installation costs of the system.

B. The total solar market development tax credit allowed for either a photovoltaic system or a solar thermal system shall not exceed nine thousand dollars ($9,000). The department shall allow solar market development tax credits only for solar thermal systems and photovoltaic systems certified by the energy, minerals and natural resources department.

C. Solar market development tax credits may not be claimed or allowed for:

1. a heating system for a swimming pool or a hot tub; or
2. a commercial or industrial photovoltaic system other than an agricultural photovoltaic system on a farm or ranch that is not connected to an electric utility transmission or distribution system.

D. The department may allow a maximum annual aggregate of:

1. two million dollars ($2,000,000) in solar market development tax credits for solar thermal systems; and
2. three million dollars ($3,000,000) in solar market development tax credits for photovoltaic systems.

E. A portion of the solar market development tax credit that remains unused in a taxable year may be carried forward for a maximum of ten consecutive taxable years following the taxable year in which the credit originates until fully expended.

F. Prior to July 1, 2006, the energy, minerals and natural resources department shall adopt rules establishing procedures to provide certification of solar thermal systems and photovoltaic systems for purposes of obtaining a solar market development tax credit. The rules shall address 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. 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.

G. 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.
3.3.28.7 - DEFINITIONS

A. “Applicant” means a New Mexico taxpayer that has installed a solar energy system and that desires to have the department certify the solar energy system pursuant to 3.3.28 NMAC so that the taxpayer may receive a state tax credit.

B. “Application package” means the application documents an applicant submits to the division 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. “Balance of system” means portions of a solar energy system other than the array.

E. “Building code authority” means the New Mexico regulation and licensing department, construction industries division or the local government agency having jurisdiction for building, electrical and mechanical codes.

F. “Certified” or “certification” means department approval of a solar energy system, which makes the taxpayer owning the system eligible for a state tax credit.

G. “Collector” means the solar thermal system component that absorbs solar energy for conversion into heat.

H. “Collector aperture” means the area of a solar thermal collector that absorbs solar energy for conversion into usable heat.

I. “Component” means a solar energy system’s equipment and materials.

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

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

L. “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.

M. “Homeowner” means a taxpayer that may obtain a permit limited to construction of single-family dwellings, private garages, carports, sheds, agricultural buildings and fences.

N. “Innovative” means an alternative method or material that is not commercialized for use in a solar energy system.

O. “Install” 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.

P. “Interconnection” means connection of a photovoltaic system that an electric utility customer operates to that utility’s distribution grid system.

Q. “Interconnection agreement” means an agreement allowing the applicant to interconnect a solar energy system of a specified type and size to a suitable electric transmission or distribution line.

R. “Module” means the photovoltaic system component that absorbs sunlight for conversion into electricity.

S. “New” means the condition of being recently manufactured and not used previously in any installation.

T. “Non-residential” means a business or agricultural enterprise.

U. “OG” means operating guidelines that the solar rating and certification corporation has or will establish including system performance or component characteristics the SRCC defines in its directory. Operating guidelines shall be from the directory in effect on July 1, 2006 and all successive revisions.
V. “Photovoltaic system” means an energy system that collects or absorbs sunlight for conversion into electricity.

W. “Portable” 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.

X. “Solar collector” means a solar thermal collector or photovoltaic module.

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

Z. “Solar energy system” means a solar thermal system or photovoltaic system.

AA. “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.

BB. “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.

CC. “SRCC” means the solar rating and certification corporation.

DD. “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.

EE. “State tax credit” means the solar market development tax credit.

FF. “Taxpayer” means the owner of a solar energy system and the residence, business or agricultural enterprise where the solar energy system is located who applies for certification of an operating solar energy system in order to receive a state tax credit.

[3.3.28.7 NMAC - N, 7-1-06; A, 1-31-08; A, 7-16-09]

3.3.28.8 - GENERAL PROVISIONS

A. Only a New Mexico taxpayer having purchased and installed an operating solar energy system the department has certified is eligible for a state tax credit.

B. A corporation shall not be eligible for certification of a solar energy system the corporation owns under 3.3.28 NMAC’s requirements. A corporation may install a solar energy system that complies with 3.3.28 NMAC’s requirements and sell the solar energy system in a residence, business or agricultural enterprise to a taxpayer. If by this sale the taxpayer becomes the full owner of both the solar energy system and the residence, business or agricultural enterprise, and complies with 3.3.28 NMAC’s requirements, that taxpayer is eligible for certification of that solar energy system.

C. A taxpayer owning a solar energy system the department certifies shall locate that system at the residence, business or agricultural enterprise that taxpayer owns. The taxpayer may rent a residence, business or agricultural enterprise that the taxpayer owns to another entity.

D. The annual aggregate amounts of the state tax credit available to taxpayers owning certified solar energy systems is limited to $2,000,000 for solar thermal systems and $3,000,000 for photovoltaic systems per calendar year. When the $2,000,000 limit for solar thermal systems or the $3,000,000 limit for photovoltaic systems is reached based on the total of taxpayers certified, the department will no longer certify taxpayers, but will accept them for future consideration in the next year, except for the last taxable year when the state tax credit is in effect. The division shall keep a record of the order of receipt of all application packages.

E. In the event of a discrepancy between a requirement of 3.3.28 NMAC and an existing New Mexico regulation and licensing department or New Mexico taxation and revenue department rule promulgated prior to 3.3.28 NMAC’s adoption, the existing rule shall govern.

[3.3.28.8 NMAC - N, 7-1-06; A, 1-31-08]
3.3.28.9 - APPLICATION

A. To apply for a state tax credit an applicant shall submit an application package to 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. The applicant shall submit the state tax credit application form and any attachments required at the same time as a complete application package. An applicant shall submit one application package for each solar energy system. All material submitted in the application package shall be capable of being provided on 8½-inch x 11-inch paper.

C. The application package shall meet 3.3.28 NMAC’s requirements. 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 taxpayer’s name, mailing address, telephone number and social security number;
   (2) the address where the solar energy system is located, if located at a residence, business or agricultural facility 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 started continuous operation or that an upgrade to an existing system became operational, if applicable;
   (5) if a contractor installed the solar energy system, the contractor’s name, address, telephone number, license category and license number;
   (6) acknowledgement that the homeowner installed the solar energy system; if applicable;
   (7) the net cost of equipment, materials and labor of the solar energy system, excluding the expenses and income listed in 3.3.28 NMAC;
   (8) a statement that the applicant signed and dated, 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;
      (b) applicant has read the certification requirements contained in 3.3.28 NMAC;
      (c) applicant understands that there are annual aggregate state tax credit limits in place for solar thermal systems and photovoltaic systems;
      (d) applicant understands that the department must certify the solar energy system documented in the application package before becoming eligible for a state tax credit;
      (e) applicant agrees to make any changes the department requires to the solar energy system for compliance with 3.3.28 NMAC; and
      (f) to ensure compliance with 3.3.28 NMAC applicant agrees to allow the division or its authorized representative to inspect the solar energy system that is described in the application package at any time from the application package’s submittal to three years after the department has certified the solar energy system, upon the division providing a minimum of five days notice to the applicant; and
   (9) a project number the division assigns to the application.

E. The application form shall request the following as optional information provided
by the applicant:

(1) taxpayer’s email address; and
(2) contractor’s email address.

F. The application form shall include optional selections where the applicant can indicate interest in allowing the department to take the following actions:

(1) adding energy monitoring equipment to the solar energy system;
(2) conducting an analysis of solar energy system operation and performance;

or

(3) conducting an analysis of taxpayer’s utility bill records.

G. The application package shall consist of the following information provided as attachments:

(1) a copy of a current property tax bill to the taxpayer for the residence, business or agricultural enterprise where the solar energy system is located;
(2) a copy of the invoice of itemized equipment and labor costs for the solar energy system;
(3) a copy of the solar energy system’s design schematic and technical specifications as described in 3.3.28 NMAC;
(4) a photographic record of the solar energy system after installation is completed;
(5) a completed system installation form;
(6) a completed taxpayer and contractor statement of understanding that shall include 3.3.28.19 NMAC;
(7) if 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 or, if SRCC has not certified the collector and the application package is submitted on January 1, 2007 or later but before January 1, 2010, a copy of the application for solar collector certification form the manufacturer has submitted to the SRCC and report status of SRCC certification process;
   (f) a description of the freeze protection;
   (g) a description of overheating protection;
   (h) thermal storage fluid or material and its volume, if thermal storage is a part of the system and if the thermal storage does not have energy provided from a non-solar or non-renewable source; and
   (i) manufacturer’s specifications for collectors, if collectors are unglazed;
(8) if 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) inverter capacity in kilowatts, if an inverter is a part of the system;
(f) battery storage capacity in kilowatt-hours, if battery storage is a
part of the system; and
(g) a copy of the signature and specifications pages of the fully
executed interconnection agreement with the electric utility if the photovoltaic system is
interconnected to a utility transmission line or distribution system; and
(9) other information the department needs to evaluate the specific system
type for certification.

H. The completed system installation form shall include the following information:
(1) printed name of the taxpayer who is identified on the application form,
(2) printed name, title and telephone number of the contractor’s authorized
representative, if applicable, who approves the system installation form;
(3) printed name, title and telephone number of the building code authority’s
authorized representative, if applicable, who approves the system installation form;
(4) date on which solar energy system installation was complete and ready to
operate;
(5) if a contractor installed the solar energy system, a statement that the
contractor’s authorized representative has signed and dated, which may be a form of electronic
signature if approved by the department, agreeing that:
   (a) the solar energy system was installed in full compliance with all
applicable federal, state and local government statutes or ordinances, rules or regulations and
codes and standards that are in effect at the time of installation;
   (b) contractor has read 3.3.28 NMAC’s certification requirements;
   (c) the date on which the solar energy system was ready to operate;
   (d) the installed solar energy system will work properly with regular
maintenance; and
   (e) contractor provided written operations and maintenance
instructions to the applicant and posted a one-page summary of these instructions in a sheltered
accessible location acceptable to the taxpayer and which is near or at the solar energy system’s
array or balance of system components;
(6) a statement that the building code authority’s authorized representative
has signed and dated, which may be a form of electronic signature if approved by the department,
that the solar energy system was installed in full compliance with all applicable codes; and
(7) if the applicant is unable to obtain a signed and dated statement from the
building code authority’s authorized representative on the system installation form, then the
applicant may provide one of the following instead:
   (a) a photograph or copy of the permit tag clearly identifying the
building code authority’s authorized representative’s signature, the date and the permit number;
   (b) an official document from the building code authority that includes
the:
      (i) agency’s name;
      (ii) authorized representative’s name, title, telephone number
and signature;
      (iii) date of authorized representative’s signature; and
      (iv) permit number; or
   (c) a web-based application the building code authority approves.
I. The division shall return an incomplete application to the applicant.

[3.3.28.9 NMAC - N, 7-1-06; A, 1-31-08; A, 7-16-09]

3.3.28.10 - APPLICATION REVIEW PROCESS

A. The department shall consider applications in the order received, according to the day they are received, but not the time of day. The department gives applications received on the same day equal consideration. If the department approves applications received on the same day and the applications would exceed the overall limit of state tax credit availability, then the department divides the available state tax credit among those applications on a prorated, net solar energy system cost basis.

B. The division reviews the application package to calculate the state tax credit, checks accuracy of the applicant’s documentation and determines whether the department certifies the solar energy system.

C. If the division finds that the application package meets 3.3.28 NMAC’s requirements and a state tax credit is available, the department certifies the applicant’s solar energy system and documents the taxpayer as eligible for a state tax credit. If a state tax credit is not available in the taxable year of certification of the solar energy system submitted in the application package, the division places the taxpayer on a waiting list for inclusion in the following taxable year, if a state tax credit remains available. The department provides approval through written notification to the applicant. The notification shall include the taxpayer’s contact information, social security number, system certification number, net solar energy system cost eligible for the state tax credit, the state tax credit amount and waiting list status, if applicable.

D. The division reports to the taxation and revenue department the information required to verify, process, and distribute each state tax credit by providing a copy of the department’s approval notification.

E. The applicant may submit a revised application package to the division. The division shall place the resubmitted application in the review schedule as if it were a new application.

F. The department disapproves an application that is not complete or correct or does not meet the approval criteria. The department’s disapproval letter shall state the reasons why the department disapproved the application. The applicant may resubmit the application package for the disapproved project. The division places the resubmitted application in the review schedule as if it were a new application.

[3.3.28.10 NMAC - N, 7-1-06; A, 1-31-08]

3.3.28.11 - 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;

2) compliance with all applicable utility company or heating fuel vendor requirements, if the system being served with a solar energy system is also served by utility electricity or a heating fuel;

3) compliance with the building code authority’s structural design requirements, as applicable to new and existing structures upon which solar energy system components may be mounted and support structures of solar energy system components;

4) permitted and inspected by the building code authority for building,

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electrical or mechanical code compliance, as applicable to the type of solar energy system installed; and

(5) a written final inspection approval obtained from the building code authority after the solar energy system’s installation, as applicable to the solar energy system type, or alternative system approval as allowed by 3.3.28 NMAC.

B. The department may certify a solar energy system that a taxpayer who is also the homeowner of the residence at which the solar energy system is located has installed and shall not certify a solar energy system that the owner of a non-residential facility has installed.

C. Solar thermal systems that the department may certify shall meet the following requirements:

(1) if installed at a residence by a
   (a) contractor, installation by a certified mechanical journeyman who is an employee of a company holding a valid New Mexico mechanical contractor license provided, however, that an apprentice may work under a validly certified journeyman’s direct supervision;
   (b) homeowner, installation by that homeowner who has met all the building code authority’s requirements for obtaining a homeowner’s permit, including passing a written examination for plumbing work the building code authority administers;

(2) if installed at a non-residential facility, installation by a certified mechanical journeyman who is an employee of a company holding a New Mexico mechanical contractor license provided, however, that an apprentice may work under a validly certified journeyman’s direct supervision; and

(3) design, permitting and installation in full compliance with all applicable provisions of the New Mexico Plumbing Code (14.8.2 NMAC), the New Mexico Mechanical Codes (14.9.2 - 5 NMAC), Solar Energy Code 14.9.6 NMAC, the New Mexico General Construction Building Codes (14.7.2 - 8 NMAC) and any amendments to these codes adopted by a political subdivision that has validly exercised its planning and permitting authority under NMSA 1978, Sections 3-17-6 and 3-18-6.

D. Photovoltaic systems that the department may certify shall meet the following requirements:

(1) if installed at a residence by a:
   (a) contractor, installation by a certified electrical journeyman who is an employee of a company holding a valid New Mexico electrical contractor license provided, however, that an apprentice may work under a validly certified journeyman’s direct supervision; or
   (b) homeowner, installation by that homeowner who has met all the building code authority’s requirements for obtaining a homeowner’s permit, including passing a written examination for electrical work the building code authority administers;

(2) if installed at a non-residential facility, installation by a certified electrical journeyman who is an employee of a company holding a New Mexico electrical contractor license provided, however, that an apprentice may work under a validly certified journeyman’s direct supervision; and

(3) design, permitting and installation in full compliance with all applicable provisions of the 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 NMSA 1978, Sections 3-17-6 and 3-18-6.

[3.3.28.11 NMAC - N, 7-1-06; A, 1-31-08; A, 7-16-09]
3.3.28.12 - SOLAR COLLECTOR AND MODULE ORIENTATION AND SUN EXPOSURE

A. A solar energy system array the department certifies shall have an azimuth angle or sun exposure reduction due to shading or other factors that results in annual energy production of the total solar energy system having a combined derating of not more than 25 percent when compared to an ideal solar energy system at the same location that has an unshaded array tilt equal to local latitude and azimuth of true south. For cases in which the combined impact of orientation and sun exposure of an array is evaluated, the applicant shall estimate a derating using a department approved method or model.

B. A tracking array of a solar energy system that the department certifies shall have a mechanism to track the sun so that the array absorber surface consistently receives the sun’s direct beam at all times when the direct beam of full sun is available, without requiring manual adjustment, except for a solar energy system having the following tracking array control features:
   (1) automatic and intentional stowage of the array due to high velocity wind to avoid damage to the array and its support structure;
   (2) automatic and intentional adjustment to off-direct-beam array orientations at low sun angles to optimize the solar energy system’s annual energy production; or
   (3) other automatic and intentional array control features that demonstrate to the department’s satisfaction that the solar energy system’s annual energy production is optimized.

C. A solar energy system that the department certifies shall have an array and balance of system components that are automatically controlled to collect sunlight or solar heat and deliver to an end use, without requiring manual operation.

D. It is the applicant’s sole responsibility to take action or meet the Solar Rights Act’s requirements, if applicable.

3.3.28.13 - 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 made of new equipment, components and materials;
   (2) if installed by a contractor, have a written minimum two year warranty provided by the contractor on parts, equipment and labor with the following exceptions;
      (a) the warranty provided by the contractor on each specific piece of equipment shall not exceed the duration and conditions of the warranty provided by the manufacturer of the equipment against defects in materials and workmanship;
      (b) in the case of an expansion of an existing system, the warranty provided by the contractor shall be limited to cover only parts, equipment and labor directly related to the upgrade or expansion; and
      (c) the owner of the solar energy system shall bear the actual cost of shipping the product for the repair and replacement.
   (3) be a complete energy system that collects, converts and distributes solar energy to the residence, business or agricultural enterprise it serves, unless requirements are met for expansion of an existing solar energy system or replacement of an existing solar energy system’s components;
   (4) if an expansion of an existing solar energy system, end use annual energy production of the new system shall be increased in comparison to the existing system by the 3.3 NMAC
amount of the minimum system size requirement and the contractor or homeowner shall provide a written summary of the condition of each major component of the system;

(5) if replacement of one or more components of an existing system, end use annual energy production of the new system shall be increased in comparison to the system’s operation under existing conditions and the contractor or homeowner shall provide a written summary of the condition of each of the system’s major components; and

(6) if a specialty or retrofit component is required for a complete solar energy system, then that component shall be included as part of the solar energy system that is eligible for department certification.

B. Solar energy systems or their portions that the department shall not certify are as follows:

(1) a system or portion of a system that uses non-solar or non-renewable sources in its operation, with the exception of the following:
   (a) power necessary to provide for solar energy system components’ incidental electricity needs; and
   (b) non-solar or non-renewable sources that do not exceed 25 percent of the system’s annual energy production;

(2) a system or portion of a system that would be present if the solar energy system was not installed;

(3) a system that increases an existing residence, business or agricultural enterprise’s average annual energy consumption;

(4) a system that is mobile and does not serve a permanent end use energy load or is not permanently located in New Mexico;

(5) 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;

(6) a system or portion of a system having one or more components not manufactured on a regular basis by a business enterprise;

(7) a system installed on a recreational vehicle;

(8) a system not serving an end use energy load or;

(9) 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.

C. The department may disapprove a system type, solar thermal collector type, photovoltaic module type or a solar energy system component if not listed in 3.3.28 NMAC for certification or may deem it innovative, if the applicant requests in the application package.

D. 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 3.3.28 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.

E. 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.

F. 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) systems without adequate freeze protection;
(7) systems incorporating drain down as a freeze protection method; and
(8) systems without adequate overheating protection.

G. 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) for solar domestic hot water systems installed at a residence or business, a minimum of 50 percent of the total domestic water heating load provided by solar energy;
(3) a collector that is:
   (a) listed as certified by the SRCC by OG-100 collector certification or OG-300 system certification processes or, if collector is not certified by the SRCC and application package is submitted on January 1, 2007 or later but before January 1, 2010, submitted by the manufacturer to the SRCC for certification and is active in the SRCC certification process;
   (b) if glazed, made of all-metal enclosures, absorber plates, fasteners and fittings; aperture glazing of tempered glass; and fiberglass or polyisocyanurate insulation; or
   (c) if unglazed, made of durable materials having a minimum 12 year warranty period for full replacement; and
(4) all components approved by an agency accredited by the American national standards institute, if available for that specific component category.

H. 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 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.

I. 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; and
(2) all components listed and labeled by a nationally recognized testing laboratory, if such listing is available for that specific component category.

J. Photovoltaic systems or their portions that the department shall not certify are as
follows:

1. a commercial or industrial photovoltaic system other than an agricultural photovoltaic system on a farm or ranch 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 a taxpayer 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 watches, calculators, walkway lights and toys.

[3.3.28.13 NMAC - N, 7-1-06; A, 1-31-08; A, 7-16-09]

3.3.28.14 - INNOVATIVE SOLAR ENERGY SYSTEMS

A. The department may certify an innovative solar energy system.

B. A taxpayer shall request that the department review an application package as an innovative solar energy system.

C. The division shall conduct a design review of a solar energy system when the taxpayer has requested innovative status.

D. The department may determine that a solar energy system is innovative if
   1. it does not include a system application, component, packaged system, solar thermal collector type or photovoltaic module type that the department may certify; and
   2. the division approves the design.

E. Design approval by the division does not indicate department approval of actual system operation, energy production or code compliance.

F. The application package of an innovative solar energy system shall include attachments in addition to those required in other sections of 3.3.28 NMAC that fully describe the solar energy system, as follows:
   1. a request for innovative status and a description of the innovative feature;
   2. a design schematic detail of each system application, component, packaged system, solar thermal collector type or photovoltaic module type that makes the solar energy system innovative;
   3. a description of system operation; and
   4. an energy analysis of the solar energy system, including an estimate of annual energy production.

G. Innovative solar energy systems that the department may certify shall meet all requirements of 3.3.28 NMAC, with the exception of the specific system application, component, packaged system, solar thermal collector type or photovoltaic module type that is to be installed.

H. The department may approve an innovative component or system for inclusion on the department’s list of certified components, if that component or system has been tested, certified, approved or listed by the applicable organization for the specific type of component or system and if such testing, certification, approval or listing is available. Upon the department listing a component or system as certified, subsequent applicants are not required to submit that component or system as an innovative system.

[3.3.28.14 NMAC - N, 7-1-06; A, 1-31-08]

3.3.28.15 - CERTIFICATION
A. The purpose of the department’s certification program is to evaluate certification of complete solar energy systems for state tax credit eligibility that are comprised of components and materials that are tested, certified, approved, or listed, as applicable, by other organizations identified or referenced in 3.3.28 NMAC.

B. When a taxpayer has installed a solar energy system, submits an application package, and complies with 3.3.28 NMAC’s certification requirements, then the solar energy system the taxpayer owns is eligible to receive department certification. The taxpayer shall submit a completed application package.

C. For purposes of monitoring compliance with 3.3.28 NMAC, the division or its authorized representative shall have the authority to inspect a solar energy system owned by a taxpayer who has submitted an application for certification, upon the division providing five days notice to the taxpayer.

[3.3.28.15 NMAC - N, 7-1-06]

3.3.28.16 - CALCULATING THE SOLAR ENERGY SYSTEM COST

A. A state tax credit shall be based on the equipment, materials and labor costs of a solar energy system the department has certified.

B. The equipment, materials and labor costs of a solar energy system the department certifies shall be documented in writing.

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. fees for use permits or variances;
   i. membership fees;
   j. financing costs or loan interest;
   k. marketing, promotional or advertising costs;
   l. repair, operating, or maintenance costs;
   m. extended warranty costs;
   n. system resale costs;
   o. system visual barrier costs;
   p. adjacent structure modification costs; and
   q. vegetation maintenance costs;

2. income, including:
   a. payments the solar energy system contractor 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 solar incentives;
   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;

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and

(c) other financial incentives provided for solar energy system installation, if applicable.

D. The division shall make the final determination of the net cost of a solar energy system the department certifies pursuant to 3.3.28 NMAC.

[3.3.28.16 NMAC - N, 7-1-06; A, 1-31-08]

3.3.28.17 - CALCULATING THE STATE TAX CREDIT

A. A state tax credit to a taxpayer for a solar energy system the department has certified shall not exceed:

   (1) 10 percent of the net solar energy system cost as provided in 3.3.28.16 NMAC; and
   (2) $9000.

B. The total sum of the state tax credit and the federal tax credit shall not exceed 10 percent of the net solar energy system cost.

C. The taxation and revenue department shall make the final determination of the amount of a state tax credit.

[3.3.28.17 NMAC - N, 7-1-06; A, 1-31-08; A, 7-16-09]

3.3.28.18 - CLAIMING THE STATE TAX CREDIT

A. To claim the state tax credit, a taxpayer owning a solar energy system that the department has certified shall submit to the taxation and revenue department a claim, which shall consist of the notification the department issued to the taxpayer, a completed claim form the taxation and revenue department has approved and any other information the taxation and revenue department requires.

B. If the amount of state tax credit claimed exceeds the taxpayer’s individual income tax liability, the taxpayer may carry the excess forward for up to 10 consecutive taxable years.

C. A taxpayer who has both a carryover state tax credit and a new state tax credit derived from a certified solar energy system in the taxable year for which the return is being filed shall first apply the amount of carryover state tax credit against the income tax liability. If the amount of liability exceeds the carryover state tax credit, then the taxpayer may apply the current year credit against the liability.

D. A taxpayer claiming a state tax credit shall not claim a state tax credit pursuant to another law for costs related to the same solar energy system costs.

[3.3.28.18 NMAC - N, 7-1-06; A, 1-31-08]

3.3.28.19 - CONSUMER INFORMATION

A. If a contractor installs the solar energy system, the contractor shall inform the taxpayer about system design, installation, performance, operation and maintenance by providing the following:

   (1) prior to system installation, a summary of the specific system type that meets all 3.3.28 NMAC’s requirements, the system’s capacity or size, and the system’s estimated annual energy production;
   (2) upon completion of system installation, written operation and maintenance instructions, including how to conduct simple diagnostic observations and tests to determine if the solar energy system is working properly to produce energy;
   (3) upon completion of system installation, a written summary of operation and maintenance instructions on one page, posted at an accessible location acceptable to the

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taxpayer and that is near or at the solar energy system’s array or balance of system components; and

(4) upon completion of system installation, written warranties in effect for equipment and contractor’s labor, including their start and end dates and telephone, address and website contact information, as applicable, for honoring or extending warranties.

B. If the solar energy system is a solar thermal system, the following information shall be displayed:

(1) pump or fan status by a visual indicator, as applicable;
(2) outlet temperature of the collector loop;
(3) if a liquid collector, the collector loop’s pressure; and
(4) the solar storage tank’s temperature, if applicable.

C. If the solar energy system is a photovoltaic system, the following information shall be displayed:

(1) for all photovoltaic systems, a visual indicator for operating status;
(2) for an electric utility interconnected system without batteries
   (a) daily and cumulative energy production in kilowatt-hours alternating current of the inverter output; and
   (b) instantaneous power output in kilowatts alternating current of the inverter output;
(3) for an electric utility interconnected system with batteries, a method to enable real-time evaluation of system power or energy production; and
(4) for a stand-alone system with battery storage
   (a) voltage and amperes of module array; and
   (b) battery storage level.

[3.3.28.19 NMAC - N, 7-1-06; A, 1-31-08; A, 7-16-09]

3.3.28.20 - INSPECTION OF SOLAR ENERGY SYSTEMS

A. The inspections required through the application process for certification of a taxpayer’s solar energy system are:

(1) inspection by the building code authority for building, electrical or mechanical code compliance, as applicable to the solar energy system type; and
(2) inspection for compliance with electric utility company requirements for photovoltaic systems that are interconnected to the distribution grid of that electric utility company, if applicable.

B. For purposes of inspecting the solar energy system’s installation, the division or its authorized representative shall have the right to inspect a solar energy system an applicant owns and the department has certified, within three years after the department’s certification, upon the division providing a minimum of five days notice to the taxpayer.

[3.3.28.20 NMAC - N, 7-1-06; A, 1-31-08; A, 7-16-09]
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 individual and who adopts a special needs child on or after January 1, 2007 or has adopted a special needs child prior to January 1, 2007, 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 dollars ($1,000) 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. 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 special needs adopted child tax credit provided in this section that would have been allowed on a joint return.

F. 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 2007, Chapter 45, Section 10)

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:

<table>
<thead>
<tr>
<th></th>
<th>1988</th>
<th>1989</th>
</tr>
</thead>
<tbody>
<tr>
<td>Statutory maximum per child</td>
<td>$2,500</td>
<td>$2,500</td>
</tr>
<tr>
<td>Number of children adopted</td>
<td>$2,500</td>
<td>$5,000</td>
</tr>
<tr>
<td>% of non-New Mexico income for 1988</td>
<td>$2,500</td>
<td>$5,000</td>
</tr>
<tr>
<td>% of non-New Mexico income for 1989</td>
<td>$2,500</td>
<td>$5,000</td>
</tr>
<tr>
<td>Adjustment to non-New Mexico income</td>
<td>$ 625</td>
<td>$1,000</td>
</tr>
</tbody>
</table>

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, 2025.

C. A taxpayer may apply for an angel investment credit by submitting a completed application to the taxation and revenue 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 apply for 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 taxation and revenue department related to the application shall also be submitted to the economic development department.

F. The taxation and revenue 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 taxation and revenue department shall report annually to the revenue stabilization and tax policy committee and the legislative finance committee on the utilization and effectiveness of the angel investment credit. The report 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;
   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 2020, Chapter 28, Section 1) (Section 2 – Applicability—the provisions of this act apply to applications for an angel investment credit for qualified investments made on or after January 1, 2019)
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 ($0.01) 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 ($0.01) 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 ($0.015) 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 ($0.02) 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 ($0.025) 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 ($0.03) 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 ($0.035) 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 ($0.04) 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 ($0.035) 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 ($0.03) 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 ($0.025) 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 ($0.02) 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 ($0.015) 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)
SUSTAINABLE BUILDING TAX CREDIT.--

A. The tax credit provided by this section may be referred to as the "sustainable building tax credit". The sustainable building tax credit shall be available for the construction in New Mexico of a sustainable building, the renovation of an existing building in New Mexico into a sustainable building or the permanent installation of manufactured housing, regardless of where the housing is manufactured, that is a sustainable building. The tax credit provided in this section may not be claimed with respect to the same sustainable building for which the sustainable building tax credit provided in the Corporate Income and Franchise Tax Act has been claimed.

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

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

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

<table>
<thead>
<tr>
<th>LEED Rating Level</th>
<th>Qualified Occupied Square Footage</th>
<th>Tax Credit per Square Foot</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>LEED-NC Silver</strong></td>
<td>First 10,000</td>
<td>$3.50</td>
</tr>
<tr>
<td></td>
<td>Next 40,000</td>
<td>$1.75</td>
</tr>
<tr>
<td></td>
<td>Over 50,000</td>
<td>$0.70</td>
</tr>
<tr>
<td></td>
<td>up to 500,000</td>
<td>$0.70</td>
</tr>
<tr>
<td><strong>LEED-NC Gold</strong></td>
<td>First 10,000</td>
<td>$4.75</td>
</tr>
<tr>
<td></td>
<td>Next 40,000</td>
<td>$2.00</td>
</tr>
<tr>
<td></td>
<td>Over 50,000</td>
<td>$1.00</td>
</tr>
<tr>
<td></td>
<td>up to 500,000</td>
<td>$1.00</td>
</tr>
<tr>
<td><strong>LEED-NC Platinum</strong></td>
<td>First 10,000</td>
<td>$6.25</td>
</tr>
<tr>
<td></td>
<td>Next 40,000</td>
<td>$3.25</td>
</tr>
<tr>
<td></td>
<td>Over 50,000</td>
<td>$2.00</td>
</tr>
<tr>
<td></td>
<td>up to 500,000</td>
<td>$2.00</td>
</tr>
<tr>
<td><strong>LEED-EB or CS Silver</strong></td>
<td>First 10,000</td>
<td>$2.50</td>
</tr>
<tr>
<td></td>
<td>Next 40,000</td>
<td>$1.25</td>
</tr>
<tr>
<td></td>
<td>Over 50,000</td>
<td>$0.50</td>
</tr>
<tr>
<td></td>
<td>up to 500,000</td>
<td>$0.50</td>
</tr>
<tr>
<td><strong>LEED-EB or CS Gold</strong></td>
<td>First 10,000</td>
<td>$3.35</td>
</tr>
<tr>
<td></td>
<td>Next 40,000</td>
<td>$1.40</td>
</tr>
<tr>
<td></td>
<td>Over 50,000</td>
<td>$0.70</td>
</tr>
<tr>
<td></td>
<td>up to 500,000</td>
<td>$0.70</td>
</tr>
</tbody>
</table>
LEED-EB or CS Platinum  
First 10,000  
Next 40,000 $2.30 
Over 50,000 
up to 500,000  
$1.40 
LEED-CI Silver  
First 10,000  
Next 40,000  
$ .70 
Over 50,000 
up to 500,000 
$ .30 
LEED-CI Gold  
First 10,000  
Next 40,000  
$ .80 
Over 50,000 
up to 500,000 
$ .40 
LEED-CI Platinum  
First 10,000  
Next 40,000  
$1.30 
Over 50,000 
up to 500,000  
$ .80.

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

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

F. A person that is a building owner may apply for 1a certificate of eligibility for the sustainable building tax credit from the energy, minerals and natural resources department after the construction, installation or renovation of the sustainable building is complete. Applications shall be considered in the order received. If the energy, minerals and natural resources department determines that the building owner meets the requirements of this subsection and that the building with respect to which the tax credit application is made meets the requirements of this section as a sustainable residential building or a sustainable commercial building, the energy, minerals and natural resources department may issue a certificate of eligibility to the building owner, subject to the limitation in Subsection G of this section. The certificate shall include the rating system certification level awarded to the building, the amount of qualified occupied square footage in
the building and a calculation of the maximum amount of sustainable building tax credit for which the building owner would be eligible. The energy, minerals and natural resources department may issue rules governing the procedure for administering the provisions of this subsection. If the certification level for the sustainable residential building is awarded on or after January 1, 2007, the energy, minerals and natural resources department may issue a certificate of eligibility to a building owner who is:

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

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

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

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

I. To be eligible for the sustainable building tax credit, the building owner shall provide to the taxation and revenue department a certificate of eligibility issued by the energy, minerals and natural resources department pursuant to the requirements of Subsection F of this section and any other information the taxation and revenue department may require to determine the amount of the tax credit for which the building owner is eligible.
J. If the requirements of this section have been complied with, the department shall issue to the building owner a document granting a sustainable building tax credit. The document shall be numbered for identification and declare its date of issuance and the amount of the tax credit allowed pursuant to this section. The document may be submitted by the building owner with that taxpayer's income tax return, if applicable, or may be sold, exchanged or otherwise transferred to another taxpayer. The parties to such a transaction shall notify the department of the sale, exchange or transfer within ten days of the sale, exchange or transfer.

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

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

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

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

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

N. 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 sustainable building tax credit that would have been allowed on a joint return.

O. The department shall compile an annual report on the sustainable building tax credit created pursuant to this section that shall include the number of taxpayers approved by the department to receive the tax credit, the aggregate amount of tax credits approved and any other information necessary to evaluate the effectiveness of the tax credit. Beginning in 2015 and every five years thereafter, the department shall compile and present the annual reports to the revenue stabilization and tax policy committee and the legislative finance committee with an analysis of the effectiveness and cost of the tax credit and whether the tax credit is performing the purpose for which...
it was created.

P. For the purposes of this section:

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

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

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

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

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

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

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

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

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

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

11. "manufactured housing" means a multisectioned home that is:

   a. a manufactured home or modular home;
   b. a single-family dwelling with a heated area of at least thirty-six feet by twenty-four feet and a total area of at least eight hundred sixty-four square feet;
   c. constructed in a factory to the standards of the United States department of housing and urban development, the National Manufactured Housing Construction and Safety Standards Act of 1974 and the Housing and Urban Development Zone Code 2 or New Mexico construction codes up to the date of the unit's construction; and
   d. installed consistent with the Manufactured Housing Act and rules adopted pursuant to that act relating to permanent foundations;

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

   a. the United States green building council for those buildings obtaining LEED certification;
   b. the administrators of the build green New Mexico rating system for those homes obtaining build green New Mexico certification; and
   c. the United States environmental protection agency for ENERGY STAR-certified manufactured homes;
"person" does not include state, local government, public school district or tribal agencies; 

"sustainable building" means either a sustainable commercial building or a sustainable residential building; 

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

(a) is certified by the United States green building council at LEED silver or higher; 
(b) achieves any prerequisite for and at least one point related to commissioning under LEED "energy and atmosphere", if included in the applicable rating system; and 
(c) has reduced energy consumption, as follows: 1) through 2011, a fifty percent energy reduction will be required based on the national average for that building type as published by the United States department of energy; and beginning January 1, 2012, a sixty percent energy reduction will be required based on the national average for that building type as published by the United States department of energy; and 2) is substantiated by the United States environmental protection agency target finder energy performance results form, dated no sooner than the schematic design phase of development;

"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; and 2) has achieved a home energy rating system index of sixty or lower as developed by the residential energy services network; or  
(b) manufactured housing that is ENERGY STAR-qualified by the United States environmental protection agency; and

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

(Laws 2013, Chapter 92, Section 1)

3.3.29.7 - DEFINITIONS
A. “Annual cap” means the annual total amount of the sustainable building tax credit available to taxpayers owning sustainable residential buildings. 
B. “Applicant” means a taxpayer who owns a sustainable residential building in New Mexico and that desires to have the department issue a certificate of eligibility for a sustainable building tax credit. 
C. “Application package” means the application documents an applicant submits to the division to receive a certificate of eligibility for a sustainable building tax credit.
D. “Build green New Mexico certification” means the verification by a department-approved verifier, that a building project has met certain prerequisites and performance benchmarks or credits within each category of the build green New Mexico rating system resulting in the issuance of a certification document.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Y. “Sustainable residential building” means:
   (1) a building used as a single-family residence that meets the energy reduction requirements and has been awarded:
      (a) LEED-H certification at the certification level of silver, gold or platinum; or
      (b) build green New Mexico certification at the gold certification level;
   (2) a building used as multi-family residences where all dwelling units have met the energy reduction requirements and the building has been awarded:
      (a) LEED-H certification at the certification level of silver, gold or platinum; or
      (b) build green New Mexico certification at the gold certification level; or
   (3) an energy star qualified manufactured home.

Z. “Taxpayer” means any individual subject to the tax imposed by the Income Tax Act, NMSA 1978, Section 7-2-1 et seq.

AA. “Taxpayer identification number” means the taxpayer’s nine digit social security number.

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

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

3.3.29.8 - GENERAL PROVISIONS

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

B. The annual total amount of the sustainable building tax credit available to taxpayers owning sustainable residential buildings is limited to $5,000,000. When the $5,000,000 limit for sustainable residential buildings is reached, based on all certificates of eligibility the department has issued, the department shall:
   (1) if part of the eligible sustainable building tax credit is within the annual cap and part is over the annual cap, issue a certificate of eligibility for the amount under the annual cap for the applicable tax year and issue a certificate of eligibility for the balance for the subsequent tax year; or
   (2) if no sustainable building tax credit funds are available, issue a certificate of eligibility for the next subsequent tax year in which funds are available, except for the last taxable year when the sustainable building tax credit is in effect.

C. No more than $1,250,000 of the $5,000,000 annual cap is for manufactured housing.

D. In the event of a discrepancy between a requirement of 3.3.29 NMAC and an existing New Mexico taxation and revenue department rule promulgated before 3.3.29 NMAC’s adoption, the existing rule governs.

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

3.3.29.9 - VERIFIER ELIGIBILITY

3.3 NMAC
A. The division reviews the qualifications for verifiers of the build green New Mexico or LEED-H certifications based on the following criteria:
   (1) the verifier is independent from the homebuilders or homeowners that may apply for certification;
   (2) the verifier has adequate staff and expertise to provide certification services, including:
       (a) experience in green home building services;
       (b) ability to enlist and serve builders and provide training, consulting and other guidance as necessary;
       (c) a method of auditing the certification process to maintain adequate stringency; and
       (d) ability to administer the program and report on the certifications, audits and other relevant information the department may request;
   (3) the verifier can identify the geographic area being served; and
   (4) the verifier provides a statement that expresses a commitment to promoting energy-efficient green building with the highest standard of excellence.

B. The department approves verifiers after an entity submits a written request to the department that includes documentation on how the entity meets the required criteria. The department notifies the entity of the reasons for disapproving eligibility.

C. The verifier shall notify the division 30 calendar days prior to making changes to its certification process or rating systems.

D. The department may rescind an existing verifier’s approval, if it determines that the above criteria are not being met. The department notifies the verifier of the reasons for disapproving or rescinding eligibility.
   (1) The division shall notify the verifier of the proposed rescission in writing. The verifier has the right to request in writing review of the decision to rescind the verifier’s approval. The verifier shall file a request for review within 20 calendar days after the division’s notice is sent. The verifier shall address the request to the division director and include the reasons that the department should not rescind the verifier’s approval. The director shall consider the request. The division director may hold a hearing and appoint a hearing officer to conduct the hearing. The division director shall send a final decision to the verifier within 20 calendar days after receiving the request or the date the hearing is held.
   (2) The verifier may appeal in writing to the department’s secretary a division director’s decision. The notice of appeal shall include the reasons that the secretary should overturn the division director’s decision. The secretary shall consider any appeal from a division director’s decision. The verifier shall file the appeal and the reasons for the appeal with the secretary within 14 calendar days of the division director’s issuance of the decision. The secretary may hold a hearing and appoint a hearing officer to conduct the hearing. The secretary shall send a final decision to the verifier within 20 calendar days after receiving the request or the date the hearing concludes.

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

3.3.29.10 - APPLICATION FOR THE SUSTAINABLE BUILDING TAX CREDIT

A. In order to obtain the sustainable building tax credit, a taxpayer shall apply for a certificate of eligibility with the division on a division-developed form. An applicant may obtain an application form from the division.

B. An application package shall include a completed application form and attachments as specified on the application form. The applicant shall submit the application form 3.3 NMAC
and required attachments at the same time. An applicant shall submit one application form for each sustainable residential building. The applicant shall submit all material submitted in the application package on 8½ inch by 11 inch paper. If the applicant fails to submit the application form and required attachments at the same time or on 8½ inch by 11 inch paper the division may consider the application incomplete.

C. An applicant shall submit a complete application package to the division no later than November 15 of the calendar year for which the applicant seeks the sustainable building tax credit to allow time for approval and issuance of a certificate of eligibility. The division will review application packages it receives after that date for the subsequent taxable year.

D. The completed application form shall consist of the following information:
   (1) the applicant’s name, mailing address, telephone number and taxpayer identification number;
   (2) the name of the applicant’s authorized representative;
   (3) the ending date of the applicant’s taxable year;
   (4) the address of the sustainable residential building, including the property’s legal description;
   (5) whether the applicant was the building owner at time of certification or a subsequent purchaser;
   (6) the qualified occupied square footage of the sustainable residential building;
   (7) the rating system under which the sustainable residential building was certified;
   (8) the certification level achieved, if applicable;
   (9) the HERS index, if applicable;
   (10) the date of rating system certification;
   (11) a statement signed and dated by the applicant, which may be a form of electronic signature if approved by the department, agreeing that:
      (a) all information provided in the application package is true and correct to the best of the applicant’s knowledge under penalty of perjury?
      (b) applicant has read the requirements contained in 3.3.29 NMAC?
      (c) if an onsite solar system is used to meet the requirements of either the rating system certification level applied for in the sustainable building tax credit or the energy reduction requirement achieved, the applicant has not applied for and will not apply for a solar market tax credit;
      (d) applicant understands that there are annual limits for the sustainable building tax credit?
      (e) applicant understands that the division must verify the documentation submitted in the application package before the department issues a certificate of eligibility for a sustainable building tax credit? and
      (f) applicant understands that the department issues a certificate of eligibility for the taxable year in which the sustainable residential building was certified or, if the sustainable building tax credit’s annual cap has been reached, for the next taxable year in which funds are available; and
   (12) a project number the division assigns to the tax credit application.

E. In addition to the application form, the application package shall consist of the following information provided as attachments:
   (1) a copy of a deed, property tax bill or ground lease in the applicant’s name as of or after the date of certification for the address or legal description of the sustainable building.
residential building?
(2) a copy of the rating system certification form?
(3) a copy of the final certification review checklist that shows the points achieved, if applicable?
(4) a copy of a HERS certificate, from a RESNET (or a rating network that has the same standards as RESNET) accredited HERS provider, using software the internal revenue service lists as eligible for certification of the federal tax credit, showing the HERS index achieved, if applicable; and
(5) other information the department needs to review the building project for the sustainable building tax credit.
[3.3.29.10 NMAC - N, 10-31-07]

3.3.29.11 - APPLICATION REVIEW PROCESS

A. The department considers applications in the order received, according to the day they are received, but not the time of day.

B. The department approves or disapproves an application package following the receipt of the complete application package. The department disapproves an application that is not complete or correct. The department’s disapproval letter shall state the reasons why the department disapproved the application. The applicant may resubmit the application package for the disapproved project. The division places the resubmitted application in the review schedule as if it were a new application.

C. The division reviews the application package to calculate the sustainable building tax credit, check accuracy of the applicant’s documentation and determine whether the department issues a certificate of eligibility for the sustainable building tax credit.

D. If an onsite solar system is used to meet the requirements of either the certification level applied for in the sustainable building tax credit or the energy reduction requirement achieved, the division verifies that no person has applied for a solar market development tax credit for that solar system. If the division finds that a solar market development tax credit has been approved for that solar system, the division shall disapprove the application for the sustainable building tax credit. The applicant may submit a revised application package to the division. The division places the resubmitted application in the review schedule as if it were a new application.

E. If the division finds that the application package meets the requirements and a sustainable building tax credit is available, the department issues the certificate of eligibility for a sustainable building tax credit. If a sustainable building tax credit is partially available or not available, the department issues a certificate of eligibility for any amount that is available and a certificate of eligibility for the balance of the sustainable building tax credit in effect. The notification shall include the taxpayer’s contact information, taxpayer identification number, certificate of eligibility number or numbers, the rating system certification level awarded to the building, the amount of qualified occupied square footage in the building, the sustainable building tax credit amount or amounts and the sustainable building tax credit’s taxable year or years.
[3.3.29.11 NMAC - N, 10-31-07]

3.3.29.12 - CALCULATING THE TAX CREDIT

A. The division calculates the sustainable building tax credit based on the qualified occupied square footage of the sustainable residential building, the rating system under which the applicant achieved certification and the certification level the applicant achieved. The tax credit
for various square footages is specified in the chart below:

<table>
<thead>
<tr>
<th>Build Green New Mexico Gold:</th>
</tr>
</thead>
<tbody>
<tr>
<td>first 2,000 square feet</td>
</tr>
<tr>
<td>equals the qualified square footage less than or equal</td>
</tr>
<tr>
<td>to 2,000 multiplied by $4.50; plus</td>
</tr>
<tr>
<td>next 1,000 square feet</td>
</tr>
<tr>
<td>the qualified square footage greater than 2,000 and</td>
</tr>
<tr>
<td>less than or equal to 3,000 multiplied by $2.00</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>LEED-H Silver:</th>
</tr>
</thead>
<tbody>
<tr>
<td>first 2,000 square feet</td>
</tr>
<tr>
<td>equals the qualified square footage less than or equal</td>
</tr>
<tr>
<td>to 2,000 multiplied by $5.00; plus</td>
</tr>
<tr>
<td>next 1,000 square feet</td>
</tr>
<tr>
<td>the qualified square footage greater than 2,000 and</td>
</tr>
<tr>
<td>less than or equal to 3,000 multiplied by $2.50</td>
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<table>
<thead>
<tr>
<th>LEED-H Gold:</th>
</tr>
</thead>
<tbody>
<tr>
<td>first 2,000 square feet</td>
</tr>
<tr>
<td>equals the qualified square footage less than or equal</td>
</tr>
<tr>
<td>to 2,000 multiplied by $6.85; plus</td>
</tr>
<tr>
<td>next 1,000 square feet</td>
</tr>
<tr>
<td>the qualified square footage greater than 2,000 and</td>
</tr>
<tr>
<td>less than or equal to 3,000 multiplied by $3.40</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>LEED-H Platinum:</th>
</tr>
</thead>
<tbody>
<tr>
<td>first 2,000 square feet</td>
</tr>
<tr>
<td>equals the qualified square footage less than or equal</td>
</tr>
<tr>
<td>to 2,000 multiplied by $9.00; plus</td>
</tr>
<tr>
<td>next 1,000 square feet</td>
</tr>
<tr>
<td>the qualified square footage greater than 2,000 and</td>
</tr>
<tr>
<td>less than or equal to 3,000 multiplied by $4.45</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Energy Star Manufactured Housing:</th>
</tr>
</thead>
<tbody>
<tr>
<td>up to 3,000 square feet</td>
</tr>
<tr>
<td>equals the qualified square footage less than or equal</td>
</tr>
<tr>
<td>to 3,000 multiplied by $3.00.</td>
</tr>
</tbody>
</table>

B. An applicant may receive both a sustainable building tax credit and a federal tax credit if the applicant is eligible for each tax credit.

C. The department makes the final determination of the amount of the sustainable building tax credit.

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

3.3.29.13 - CLAIMING THE STATE TAX CREDIT

A. To claim the sustainable building tax credit, an applicant shall submit all certificates of eligibility to the taxation and revenue department within 30 days of the department’s issuance, along with a completed form provided by the taxation and revenue department, and any other information the taxation and revenue department requires.

B. Beginning with the taxable year on each certificate of eligibility, the taxation and revenue department will apply 25 percent of the amount on the certificate against the applicant’s income tax liability for four years, unless the amount is less than or equal to $25,000, in which case the taxation and revenue department applies the entire sustainable building tax credit in the taxable year on the certificate.

C. If the amount of the sustainable building tax credit the applicant claims exceeds the applicant’s income tax liability, the applicant may carry the excess forward for up to seven consecutive taxable years.

D. A taxpayer claiming a sustainable building tax credit shall not claim a tax credit pursuant to another law for the same sustainable residential building unless the other tax credit is
applicable to systems that are unrelated to the sustainable building tax credit. In addition, a taxpayer claiming the sustainable building tax credit shall not claim the credit for the same sustainable building under both the Income Tax Act and the Corporate Income and Franchise Tax Act.

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

3.3.30.7 - DEFINITIONS

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

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

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

D. “Building project” means a new construction or renovation project that will result in one or more sustainable commercial buildings.

E. “Building type” means the primary use of a building or section of a building as defined in target finder.

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

G. “Certification level” means one of the following:
   (1) silver;
   (2) gold; or
   (3) platinum.

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

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

J. “Energy reduction requirements” means:
   (1) through 2011, a 50 percent energy reduction based on the national average for that building type as published by the United States department of energy; and
   (2) beginning January 1, 2012, a 60 percent energy reduction based on the national average for that building type as published by the United States department of energy.

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

L. “LEED certification” means the U. S. green building council’s verification that a building project has met certain prerequisites and performance benchmarks or credits within each category of a LEED rating system resulting in the issuance of a certification document.

M. “LEED-CI” means the LEED rating system for commercial interiors.

N. “LEED-CS” means the LEED rating system for the core and shell of buildings.

O. “LEED-EB” means the LEED rating system for existing buildings.

P. “LEED-NC” means the LEED rating system for new buildings and major renovations.

Q. “LEED rating system” means one of the following:
   (1) LEED-CI;
   (2) LEED-CS;
   (3) LEED-EB; or
   (4) LEED-NC.
R. “LEED registration” means the notification to the U. S. green building council that a project is pursuing LEED certification.

S. “Most current” means the LEED rating system available and selected at the time of LEED registration.

T. “Qualified occupied square footage” means the building’s occupied spaces as determined by the U. S. green building council for those buildings obtaining LEED certification.

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

V. “Sustainable building tax credit” means the personal income tax credit the state of New Mexico issues to an applicant for a sustainable commercial building.

W. “Sustainable commercial building” means a building that is registered with and certified by the U. S. green building council under the LEED-NC, LEED-EB, LEED-CS or LEED-CI rating system at the certification level of silver, gold or platinum and that:

(1) achieves any prerequisite for and at least one point related to commissioning under the “energy and atmosphere” credits of LEED, if included in the applicable rating system; and

(2) has met the energy reduction requirements as substantiated by the United States environmental protection agency target finder energy performance results form, dated no sooner than the schematic design phase of development, or an alternative method the division approved pursuant to 3.3.30.13 NMAC.

X. “Target finder” means the web-based program developed by the United States environmental protection agency to establish an energy goal in kilo British thermal units per square foot per year for predetermined building types.

Y. “Tax credit request” means the notification to the division that a project is pursuing the sustainable building tax credit.

Z. “Tax credit request package” means the documents an applicant submits to the division with its tax credit request.

AA. “Taxpayer” means an individual subject to the tax imposed by the Income Tax Act, NMSA 1978, Section 7-2-1 et seq.

BB. “Taxpayer identification number” means the taxpayer’s nine digit social security number.

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

3.3.30.8 - GENERAL PROVISIONS

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

B. The annual total amount of the sustainable building tax credit available to taxpayers owning sustainable commercial buildings is limited to $5,000,000. When the $5,000,000 limit for sustainable commercial buildings is reached, based on all certificates of eligibility the department has issued, the department shall:

(1) if part of the eligible sustainable building tax credit is within the annual cap and part is over the annual cap, issue a certificate of eligibility for the amount under the annual cap for the applicable tax year and issue a certificate of eligibility for the balance for the subsequent tax year; or

(2) if no sustainable building tax credit funds are available, issue a certificate of eligibility for the next subsequent tax year in which funds are available, except for the last 3.3 NMAC
taxable year when the sustainable building tax credit is in effect.

C. In the event of a discrepancy between a requirement of 3.3.30 NMAC and an existing New Mexico taxation and revenue department rule promulgated before 3.3.30 NMAC’s adoption, the existing rule governs.

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

3.3.30.9 - TAX CREDIT REQUEST

A. An applicant seeking the sustainable building tax credit shall file a completed tax credit request form with the department in order to be eligible for the sustainable building tax credit. An applicant may obtain a tax credit request form from the division. This allows the department to predict the potential amount of the tax credit to be used and allows the applicant to obtain the status of the sustainable building tax credit’s available funds.

B. A tax credit request package shall include a completed tax credit request form and all attachments as specified on the form. The applicant shall submit to the division the tax credit request form and the required attachments at the same time. An applicant shall submit one tax credit request form for each sustainable commercial building. The applicant shall provide all material submitted in the tax credit request package on 8½ inch by 11 inch paper. If the applicant fails to submit the tax credit request form and required attachments at the same time or on 8½ inch by 11 inch paper the division may consider the tax credit request incomplete.

C. An applicant shall submit a tax credit request package to the division after the applicant has registered the proposed sustainable commercial building project with the U.S. green building council for LEED certification and before filing an application package with the division.

D. A complete tax credit request form shall include the following information:

1. the applicant’s name, mailing address, telephone number and taxpayer identification number;
2. that the request is for a personal income tax credit;
3. the applicant’s email address and an alternative phone number as optional information;
4. the property’s legal description and, if available, the address of the sustainable commercial building;
5. the LEED rating system under which the building project is registered with the U.S. green building council;
6. the certification level the applicant is seeking;
7. whether the basis of the energy reduction requirement is substantiated through the use of target finder or an alternative method;
8. the maximum kilo British thermal units per square foot per year required for the sustainable commercial building to meet the energy reduction requirements for the sustainable building tax credit, broken out by all energy sources and including the percent of use for each energy source;
9. the qualified occupied square footage of the sustainable commercial building;
10. the estimated date of LEED certification for the building;
11. a statement signed and dated by the applicant or the applicant’s authorized representative, which may be a form of electronic signature if approved by the department, agreeing that:
   a. all information provided in the application package is true and correct to the best of the applicant’s knowledge under penalty of perjury;
the applicant has read the requirements contained in 3.3.30 NMAC;

(c) the applicant understands that there are annual limits for the sustainable building tax credit;

(d) the applicant understands that the division’s acceptance of the tax credit request package in no way guarantees that the applicant will receive a certificate of eligibility for the sustainable building tax credit;

(e) the applicant understands that the tax credit request will expire 30 days after the estimated LEED certification date of the building project unless one of the following occur:

(i) the applicant files an application with the division; or

(ii) if the estimated LEED certification date for the building project is extended, the applicant notifies the division in writing of a new estimated LEED certification date; and

(f) applicant understands that if the tax credit request expires a new tax credit request is required; and

(12) a project number the division assigns to the tax credit request.

E. The tax credit request package shall consist of the following information provided as attachments:

(1) a copy of the LEED registration form filed with U. S. green building council and the U. S. green building council’s confirmation notice;

(2) a copy of the initial LEED checklist that shows the LEED credits and points the applicant is seeking;

(3) documentation of the energy reduction requirement including the following:

(a) the forms from using target finder, including the input form and the results form; or

(b) other documentation that describes how the energy reduction requirement was determined and justifying how this method achieves the sustainable building tax credit requirements (see 3.3.30.13 NMAC for the alternative method approval process);

(4) a copy of a summary project schedule showing major milestones; and

(5) other information the department needs to review the tax credit request package.

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

3.3.30.10 - TAX CREDIT REQUEST REVIEW PROCESS

A. The division records tax credit requests in the order received, according to the day they are received, but not the time of day.

B. The division does not accept a tax credit request until the division approves the information the application provided from using target finder or an alternative method of substantiating the energy reduction requirement (see 3.3.30.13 NMAC for the alternative method approval process).

C. The department denies acceptance of a tax credit request that is not complete or correct. The department’s denial letter shall state the reasons why the department denied acceptance of the tax credit request. The applicant may resubmit the tax credit request package for the denied project. The division places the resubmitted tax credit request in the review schedule as if it were a new tax credit request.

D. Upon acceptance of the tax credit request, the division:
(1) notifies the applicant in writing or by email of the calculated sustainable building tax credit based on the information in the tax credit request package;  
(2) records the tax credit request information so the potential amounts to be used in the future can be estimated; and  
(3) advises the applicant how the applicant may obtain the status of the sustainable building tax credit’s available funds.  

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

3.3.30.11 - APPLICATION FOR THE SUSTAINABLE BUILDING TAX CREDIT  

A. In order to receive a certificate of eligibility for the tax credit, the applicant must submit an application for the sustainable building tax credit after the division has accepted the tax credit request, the building is completed, the applicant has fulfilled all other requirements and the total annual limit for the sustainable building tax credit has not been met. An applicant may obtain an application form from the division.  

B. An application package shall include a completed application form and attachments as specified on the form. The applicant shall submit the application form and required attachments at the same time. An applicant shall submit one application form for each sustainable commercial building. The applicant shall submit all material submitted in the application package on 8½ inch by 11 inch paper. If the applicant fails to submit the application form and required attachments at the same time or on 8½ inch by 11 inch paper the division may consider the application incomplete.  

C. An applicant shall submit a complete application package to the division no later than November 15 of the calendar year for which the applicant seeks the sustainable building tax credit to allow time for approval and issuance of a certificate of eligibility. The division may review application packages it receives after that date for the subsequent calendar year.  

D. The completed application form shall consist of the following information:  

(1) the project number the division assigned to the tax credit request for the proposed sustainable commercial building;  
(2) the applicant’s name, mailing address, telephone number and taxpayer identification number;  
(3) the address of the sustainable commercial building, including the property’s legal description;  
(4) whether the applicant was the building owner at time of certification or a subsequent purchaser;  
(5) the LEED rating system under which the sustainable commercial building was certified by the U.S. green building council;  
(6) the certification level achieved;  
(7) the kilo British thermal units per square foot per year anticipated as demonstrated in the energy model submitted for LEED certification, broken out by all energy sources and including the percent of use for each energy source;  
(8) revised documentation of the energy reduction requirement, if the percent of use of any energy source for the energy model is different from the original energy target documentation by more than 10 percent;  
(9) the qualified occupied square footage of the sustainable commercial building;  
(10) the date of LEED certification; and  
(11) a statement signed and dated by the applicant or an authorized representative of the applicant, which may be a form of electronic signature if approved by the
department, asserting that:

(a) all information provided in the application package is true and correct to the best of the applicant’s knowledge under penalty of perjury;
(b) all inputs for the energy reduction requirements are the same as the inputs for the energy model;
(c) if an onsite solar system is used to meet the requirements of either the LEED certification level applied for in the sustainable building tax credit or the energy reduction requirement achieved, the applicant has not applied for and will not apply for a solar market tax credit;
(d) applicant understands that there are annual limits in place for the sustainable building tax credit;
(e) applicant understands that the division must verify the documentation submitted in the application package before the department issues a certificate of eligibility for a sustainable building tax credit; and
(f) applicant understands that the department issues a certificate of eligibility for the tax year in which the sustainable commercial building was certified or if the applicant submitted the application after November 15 or the sustainable building tax credit’s annual cap has been reached for the next tax year in which funds are available.

E. In addition to the application form, the application package shall consist of the following information provided as attachments:

1. a copy of a current warranty deed, property tax bill or ground lease in the applicant’s name as of or after the date of LEED certification for the address or legal description of the sustainable commercial building;
2. a copy of the LEED certification form the U. S. green building council issued;
3. a copy of the final LEED project info or project summary that shows the building’s square footage;
4. a copy of the final certification review LEED checklist that shows the LEED credits achieved;
5. a copy of the final LEED optimize energy performance template or templates, signed by a New Mexico licensed design professional, that the applicant submitted for LEED certification including the results of the energy model that shows the kilo British thermal units per square foot per year for the sustainable commercial building;
6. revised documentation of the energy reduction requirement, if the percent of use of any energy source for the energy model is different from the original energy target documentation by more than 10 percent; and
7. a copy of the final LEED enhanced commissioning template, if available under the applicable LEED rating system; and
8. other information the department needs to review the building project for the sustainable building tax credit.

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

3.3.30.12 - APPLICATION REVIEW PROCESS

A. The department considers applications in the order received, according to the day they are received, but not the time of day.
B. The department approves or disapproves an application package following the receipt of the complete application package.
C. The division reviews the application package to calculate the sustainable building

3.3 NMAC
tax credit, check accuracy of the applicant’s documentation and determine whether the department issues a certificate of eligibility for the sustainable building tax credit.

D. If an onsite solar system is used to meet the requirements of either the LEED certification level applied for in the sustainable building tax credit or the energy reduction requirement achieved, the division verifies that no person has applied for a solar market development tax credit for that solar system. If the division finds that a solar market development tax credit has been approved for that solar system, the division shall disapprove the application for the sustainable building tax credit. The applicant may submit a revised application package to the division. The division places the resubmitted application in the review schedule as if it were a new application.

E. If the division finds that the application package meets the requirements and funds for a sustainable building tax credit are available, the department issues the certificate of eligibility for a sustainable building tax credit. If funds for a sustainable building tax credit are partially available or not available, the department issues a certificate of eligibility for any amount that is available and a certificate of eligibility for the balance for the next taxable year in which funds are available, until the last taxable year when the sustainable building tax credit is in effect. The department provides approval through written notification to the applicant upon the application’s completed review. The notification shall include the taxpayer’s contact information, taxpayer identification number, certificate of eligibility number or numbers, the sustainable building tax credit amount or amounts and the sustainable building tax credit’s taxable year or years.

F. The department shall disapprove an application that is not complete or correct. The department’s disapproval letter shall state the reasons why the department disapproved the application. The applicant may resubmit the application package for the disapproved project. The division places the resubmitted application in the review schedule as if it were a new application.

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

3.3.30.13 - VERIFICATION OF THE ALTERNATIVE METHOD USED FOR THE ENERGY REDUCTION REQUIREMENT

A. In the event the sustainable commercial building is a building type that is not available in target finder and the applicant uses an alternative method for the energy reduction requirement, the division reviews the submitted documentation. The following information shall be included:

   (1) a narrative describing the methodology used;
   (2) the kilo British thermal units per square foot per year for all buildings, real or modeled, used as a basis of comparison, broken out by all energy sources and including the percent of use for each energy source; and
   (3) all formulas, assumptions and other explanation necessary to clarify how the kilo British thermal units per square foot per year for this project was derived.

B. The division uses the following criteria to evaluate the alternative method:

   (1) clarity and completeness of the description of the alternative method;
   (2) reasonableness of assumptions and comparisons; and
   (3) thoroughness of justification of the method.

C. If the division rejects an alternative method it notifies the applicant of the reasons for the rejection.

D. The applicant may request that the division obtain the advice of a volunteer review committee of three or more New Mexico registered architects and New Mexico licensed
professional mechanical and electrical engineers, chosen by the division, on their assessment of
the alternative method, at which time the division may:
   (1) reconsider the decision and accept the alternative method;
   (2) recommend a revised alternative method; or
   (3) reaffirm the rejection of the alternative method.

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

3.3.30.14 - CALCULATING THE TAX CREDIT

A. The division calculates the sustainable building tax credit based on the qualified
occupied square footage of the sustainable commercial building, the LEED rating system under
which the applicant achieved LEED certification and the certification level the applicant
achieved. The tax credit for various square footages is specified in the chart below:

<table>
<thead>
<tr>
<th>LEED-NC Silver:</th>
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<tbody>
<tr>
<td>first 10,000 square feet</td>
</tr>
<tr>
<td>equals the qualified square</td>
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<tr>
<td>footage less than or equal</td>
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<tr>
<td>to 10,000 multiplied by $3.50; plus</td>
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<tr>
<td>next 40,000 square feet</td>
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<tr>
<td>the qualified square footage</td>
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<td>greater than 10,000 and</td>
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<tr>
<td>less than or equal to 50,000</td>
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<td>greater than 50,000 and</td>
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<tr>
<td>less than or equal to 500,000</td>
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<tr>
<td>multiplied by $.70</td>
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<tr>
<th>LEED-NC Gold:</th>
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<tbody>
<tr>
<td>first 10,000 square</td>
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<tr>
<td>equals the qualified square</td>
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<tr>
<td>footage less than or equal</td>
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<tr>
<td>to 10,000 multiplied by $4.75; plus</td>
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<tr>
<td>the qualified square footage</td>
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<td>greater than 10,000 and</td>
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<td>less than or equal to 50,000</td>
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<tr>
<td>multiplied by $2.00; plus</td>
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<tr>
<td>next 450,000 square feet</td>
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<tr>
<td>the qualified square footage</td>
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<td>greater than 50,000 and</td>
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<td>less than or equal to 500,000</td>
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<tr>
<td>multiplied by $1.00</td>
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<th>LEED-NC Platinum:</th>
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<tr>
<td>first 10,000 square feet</td>
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<tr>
<td>equals the qualified square</td>
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<tr>
<td>footage less than or equal</td>
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<tr>
<td>to 10,000 multiplied by $6.25; plus</td>
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<tr>
<td>next 40,000 square feet</td>
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<tr>
<td>the qualified square footage</td>
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<tr>
<td>greater than 10,000 and</td>
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<tr>
<td>less than or equal to 50,000</td>
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<tr>
<td>multiplied by $3.25; plus</td>
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<td>next 450,000 square feet</td>
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<td>the qualified square footage</td>
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<tr>
<td>multiplied by $2.00</td>
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<th>LEED-EB OR LEED-CS Silver:</th>
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<tr>
<td>first 10,000 square feet</td>
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<td>equals the qualified square</td>
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<tr>
<td>footage less than or equal</td>
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<tr>
<td>to 10,000 multiplied by $2.50; plus</td>
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<td>next 40,000 square feet</td>
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<td>multiplied by $.50</td>
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<th>LEED-EB OR LEED-CS Gold:</th>
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<td>equals the qualified square</td>
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<td>to 10,000 multiplied by $3.35; plus</td>
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equal to 500,000 multiplied by $.70

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<th>LEED-EB OR LEED-CS Platinum:</th>
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<td>first 10,000 square feet</td>
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<td>next 40,000 square feet</td>
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<th>LEED-CI Silver:</th>
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<td>first 10,000 square feet</td>
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<td>next 40,000 square feet</td>
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<th>LEED-CI Gold:</th>
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<th>LEED-CI Platinum:</th>
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<td>first 10,000 square feet</td>
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<tr>
<td>next 40,000 square feet</td>
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<tr>
<td>next 450,000 square feet</td>
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B. An applicant may receive both a sustainable building tax credit and a federal tax credit if the applicant is eligible for each tax credit.

C. The department makes the final determination of the amount of the sustainable building tax credit.

[3.3.30.14 NMAC - N, 10-31-07]
consecutive taxable years.

D. A taxpayer claiming a sustainable building tax credit shall not claim a tax credit pursuant to another law for the same sustainable commercial building unless the other tax credit is applicable to systems that are unrelated to the sustainable building tax credit. In addition, a taxpayer claiming the sustainable building tax credit shall not claim the credit for the same sustainable building under both the Income Tax Act and the Corporate Income and Franchise Tax Act.

[3.3.30.15 NMAC - N, 10-31-07]
TAX CREDIT--AGRICULTURAL WATER CONSERVATION EXPENSES.--

A. A taxpayer may claim a credit against the taxpayer's income tax liability for expenses incurred by the taxpayer for eligible improvements in irrigation systems or water management methods. The credit may be claimed for the taxable year in which the expenses are incurred if the taxpayer:

(1) in that year, owned or leased a water right appurtenant to the land on which an eligible improvement was made;

(2) files an individual New Mexico income tax return for that year;

(3) in that year, is not a dependent of another individual; and

(4) does not take a tax credit for the same expense on any corporate tax return filed by the taxpayer.

B. The credit provided in this section shall be in the following amounts, not to exceed a maximum annual credit of ten thousand dollars ($10,000):

(1) for expenses incurred from January 1, 2008 until December 31, 2008, an amount equal to thirty-five percent of the incurred expenses; and

(2) for expenses incurred on or after January 1, 2009, an amount equal to fifty percent of the incurred expenses.

C. As used in this section, "eligible improvement in irrigation systems or water management methods" means an improvement that is:

(1) made on or after January 1, 2008;

(2) consistent and complies with a water conservation plan approved by the local soil and water conservation district in which the improvement is located; and

(3) primarily designed to substantially conserve water on land in New Mexico that is owned or leased by the taxpayer and used by the taxpayer or the taxpayer's lessee to:

(a) produce agricultural products;

(b) harvest or grow trees; or

(c) sustain livestock.

D. Taxpayers who are considered for federal income tax purposes as co-owners of the land on which an eligible improvement in irrigation systems or water management methods is made may claim the pro rata share of the credit allowed pursuant to this section based on the co-owner's ownership interest. The total of the credits allowed all the taxpayers considered co-owners may not exceed the amount that would have been allowed a sole owner of the land.

E. 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.

F. If the allowable tax credit in a taxable year exceeds the income taxes otherwise due from a taxpayer pursuant to the Income Tax Act, or if there are no income taxes due from the taxpayer, the taxpayer may carry forward the amount of the credit not used in that year to offset the taxpayer's liability for
income taxes pursuant to the Income Tax Act for not more than five consecutive taxable years.

G. The New Mexico department of agriculture, with the advice of the soil and water conservation commission, and with information provided by the state engineer, shall promulgate rules to implement this section, and those rules shall include detailed guidelines to assist the department in determining whether improvements in irrigation systems or water management methods qualify for the credit available under this section.

H. A taxpayer claiming the credit shall provide documentary evidence of the amount of water conserved during the period for which the credit is claimed if requested by the department.

I. Water conserved due to improvements in irrigation systems or water management methods and for which a credit is claimed shall not be subject to abandonment or forfeiture, nor shall the conserved water be put to consumptive beneficial use.

J. As used in this section, "taxpayer" may include a partnership, limited liability corporation or other form of pass-through entity, which may pass the credit provided in this section through to its owners in proportion to their share of ownership.

(Laws 2007, Chapter 204, Section 5 – Applicable to Tax Years Beginning January 1, 2008, through January 1, 2013)
7-2-18.21. CREDIT--BLENDED BIODIESEL FUEL.--

A. A taxpayer who is liable for payment of the special fuel excise tax pursuant to Subsections A through D of Section 7-16A-2.1 NMSA 1978 and who files a New Mexico income tax return is eligible to claim a credit against income tax liability for each gallon of blended biodiesel fuel on which that person paid the special fuel excise tax in the taxable year, or would have paid the special fuel excise tax in the taxable year but for the deductions allowed pursuant to Subsections B through F of Section 7-16A-10 NMSA 1978 or the treaty exemption for north Atlantic treaty organization use. The credit shall be in the following amounts for the following periods:

1. from January 1, 2007 until December 31, 2010, at a rate of three cents ($0.03) per gallon;
2. from January 1, 2011 until December 31, 2011, at a rate of two cents ($0.02) per gallon; and
3. from January 1, 2012 until December 31, 2012, at a rate of one cent ($0.01) per gallon.

B. The tax credit provided by this section may not be claimed with respect to the same blended biodiesel fuel for which a credit has been claimed pursuant to the Corporate Income and Franchise Tax Act or for which a credit or refund has been claimed pursuant to Section 7-16A-13 NMSA 1978.

C. A taxpayer who otherwise qualifies for and claims a credit pursuant to this section for blended biodiesel fuel on which special fuel excise tax has been paid by a partnership or other business association of which the taxpayer is a member may claim a credit only in proportion to the taxpayer's interest in the partnership or business association. The total credit claimed in the aggregate by all members of the partnership or business association shall not exceed the amount of credit allowed pursuant to Subsection A of this section.

D. 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. The tax credit provided by this section may only be applied against the income tax liability of the person who paid the special fuel excise tax on the blended biodiesel fuel with respect to which the credit is provided, or who would have paid the special fuel excise tax but for the deductions allowed pursuant to Subsections B through F of Section 7-16A-10 NMSA 1978 or the treaty exemption for north Atlantic treaty organization use. If the credit exceeds the person's income tax liability for the taxable year in which the credit is granted, the credit may be carried forward for five years.

F. A taxpayer claiming a credit pursuant to this section shall provide documentation of eligibility in form and content as determined by the department.

G. For the purposes of this section:

1. "biodiesel" means renewable, biodegradable, monoalkyl ester combustible liquid fuel that is derived from agricultural plant oils or animal
fats and that meets American society for testing and materials D 6751 standard specification for biodiesel B100 blend stock for distillate fuels;

(2) "blended biodiesel fuel" means a diesel fuel that contains at least two percent biodiesel; and

(3) "diesel fuel" means any diesel-engine fuel used for the generation of power to propel a motor vehicle.

(Laws 2007, Chapter 204, Section 7)
7-2-18.22. TAX CREDIT—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 five thousand dollars ($5,000) for all eligible physicians, osteopathic physicians, dentists, clinical psychologists, podiatrists and optometrists who qualify pursuant to the provisions of this section, except the credit shall not exceed three thousand dollars ($3,000) for all eligible dental hygienists, physician assistants, certified nurse-midwives, certified registered nurse anesthetists, certified nurse practitioners and clinical nurse specialists.

C. To qualify for the rural health care practitioner tax credit, an eligible health care practitioner shall have provided health care during a taxable year for at least two thousand eighty hours at a practice site located in an approved, rural health care underserved area. An eligible rural health care practitioner who provided health care services for at least one thousand forty hours but less than two thousand eighty hours at a practice site located in an approved rural health care underserved area during a taxable year is eligible for one-half of the credit amount.

D. Before an eligible health care practitioner may claim the rural health care practitioner tax credit, the practitioner shall submit an 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.

E. 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.

F. As used in this section:

(1) "eligible health care practitioner" means:

(a) a 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;
(b) a dentist or dental hygienist licensed pursuant to the Dental Health Care Act;
(c) an optometrist licensed pursuant to the provisions of the Optometry Act;
(d) an osteopathic physician licensed pursuant to the provisions of Chapter 61, Article 10 NMSA 1978 or an osteopathic physician assistant licensed pursuant to the provisions of the Osteopathic Physicians' Assistants Act;
(e) a physician or physician assistant licensed pursuant to the provisions of Chapter 61, Article 6 NMSA 1978;
(f) a podiatrist licensed pursuant to the provisions of the Podiatry Act;
(g) a clinical psychologist licensed pursuant to the provisions of the Professional Psychologist Act; and
(h) a registered nurse in advanced practice who has been prepared through additional formal education as provided in Sections 61-3-23.2 through 61-3-23.4 NMSA 1978 to function beyond the scope of practice of professional registered nursing, including certified nurse practitioners, certified registered nurse anesthetists and clinical nurse specialists;

(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 an area or location identified by the department of health as falling outside of an urban area.

(Laws 2007, Chapter 361, Section 2)
A. Except as otherwise provided in Subsection B of this section, a taxpayer who for the 2007 taxable year files a New Mexico income tax return, is a full-year or first-year resident of New Mexico and is not a trust, estate or a dependent of another taxpayer is allowed a credit in the amount determined under Subsection C of this section. The credit may be allowed even though the taxpayer has no income taxable under the Income Tax Act for the 2007 taxable year.

B. A claim for the refundable tax credit provided in this section is not allowed for a resident who was an inmate of a public institution for more than six months during the 2007 taxable year.

C. The tax credit allowed in this section shall be in the amount determined from the following tables for:

(1) married taxpayers filing jointly:

<table>
<thead>
<tr>
<th>Adjusted Gross Income</th>
<th>Credit Amount for Taxpayer and Spouse</th>
<th>Additional Credit Amount for Each Dependent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Over</td>
<td>Not Over</td>
<td></td>
</tr>
<tr>
<td>0</td>
<td>$30,000</td>
<td>$100</td>
</tr>
<tr>
<td>$30,000</td>
<td>$50,000</td>
<td>$80.00</td>
</tr>
<tr>
<td>$50,000</td>
<td>$70,000</td>
<td>$50.00</td>
</tr>
<tr>
<td>$70,000</td>
<td>$0.00</td>
<td>$0.00; or</td>
</tr>
</tbody>
</table>

(2) taxpayers filing as single, head of household, married filing separately or as a surviving spouse:

<table>
<thead>
<tr>
<th>Adjusted Gross Income</th>
<th>Credit Amount for Taxpayer and Spouse</th>
<th>Additional Credit Amount for Each Dependent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Over</td>
<td>Not Over</td>
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</tr>
<tr>
<td>0</td>
<td>$30,000</td>
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<td>$50,000</td>
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<tr>
<td>$70,000</td>
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<td>$0.00</td>
</tr>
</tbody>
</table>

D. The tax credit allowed in this section may be credited by the department against the taxpayer's New Mexico income tax liability. If the taxpayer is liable for interest and penalties on the taxpayer's income tax liability for the 2007 taxable year prior to the effective date of this section, the amount of interest and penalties shall
not be recomputed due to the credit provided by this section but may be satisfied by applying the credit to the penalty or interest due. Notwithstanding the provisions of Section 7-1-68 NMSA 1978, interest in the amount established by Subsection B of Section 7-1-68 NMSA 1978 shall only be allowed and paid on the amount to be refunded under Subsection E of this section if not refunded or credited within one hundred twenty days after the effective date of this section or the applicable period established in Subsection D of Section 7-1-68 NMSA 1978, whichever is later.

E. If the tax credit exceeds the taxpayer's income tax liability, the excess shall be refunded to the taxpayer.

F. For purposes of this section, "dependent" means "dependent" as defined by Section 152 of the Internal Revenue Code.

(Laws 2008 - 1st SS, Chapter 3, Section 1)
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, 2010 and who purchases and installs after January 1, 2010 but before December 31, 2020 a geothermal ground-coupled heat pump in a residence, business or agricultural enterprise in New Mexico owned by that taxpayer 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 tax credit". The total geothermal ground-coupled heat pump tax credit allowed to a taxpayer shall not exceed nine thousand dollars ($9,000). The department shall allow a geothermal ground-coupled heat pump tax credit only for geothermal ground-coupled heat pumps certified by the energy, minerals and natural resources department.

B. A portion of the geothermal ground-coupled heat pump tax credit that remains unused in a taxable year may be carried forward for a maximum of ten consecutive taxable years following the taxable year in which the credit originates until the credit is fully expended.

C. Prior to July 1, 2010, the energy, minerals and natural resources department shall adopt rules establishing procedures to provide certification of geothermal ground-coupled heat pumps for purposes of obtaining a geothermal ground-coupled heat pump tax credit. The rules shall address technical specifications and requirements relating to safety, building code and standards compliance, minimum system sizes, system applications and lists of eligible components. The energy, minerals and natural resources department may modify the specifications and requirements as necessary to maintain a high level of system quality and performance.

D. The department may allow a maximum annual aggregate of two million dollars ($2,000,000) in geothermal ground-coupled heat pump tax credits. Applications for the credit shall be considered in the order received by the department.

E. A taxpayer who otherwise qualifies and claims a geothermal ground-coupled heat pump 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. 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.

G. As used in this section, "geothermal ground-coupled heat pump" means a system that uses energy from the ground, water or, ultimately, the sun for distribution of heating, cooling or domestic hot water; that has either a minimum coefficient of performance of three and four-tenths or an
efficiency ratio of sixteen or greater; and that is installed by an accredited installer certified by the international ground source heat pump association.

(Laws 2009, Chapter 271, Section 1)

3.3.32.7 - DEFINITIONS
A. “Annual cap” means the annual aggregate amount of the geothermal ground-coupled heat pump tax credit available to individual and corporate taxpayers.
B. “Applicant” means an individual taxpayer or taxpayers who own a geothermal ground-coupled heat pump system in New Mexico and that desires to have the department issue a certificate of eligibility for the geothermal ground-coupled heat pump tax credit.
C. “Application package” means the application document and all attachments that an applicant submits to the division to receive a certificate of eligibility for a geothermal ground-coupled heat pump tax credit.
D. “Certificate of eligibility” means the document, with a unique system certification number, that specifies the amount and taxable year for the approved geothermal ground-coupled heat pump tax credit.
E. “Department” means the energy, minerals and natural resources department.
F. “Division” means the energy, minerals and natural resources department’s energy conservation and management division.
G. “Geothermal ground-coupled heat pump system” means a system that uses energy from the ground, water or, ultimately, the sun for distribution of heating, cooling or domestic hot water; that has either a minimum coefficient of performance of three and four-tenths or an efficiency ratio of 16 or greater; and that is installed by an accredited installer certified by the international ground source heat pump association.
H. “Geothermal ground-coupled heat pump tax credit” means the personal income tax credit that the taxation and revenue department issues to an applicant for a geothermal ground-coupled heat pump system.
I. “Accredited installer” means a state of New Mexico licensed contractor who has documentation of successful completion, or has documentation of the installing employees’ successful completion, of the “Accredited Installer Workshop” course provided by the international ground source heat pump association.
J. “IGSHPA” means the non-profit organization named the international ground source heat pump association, established in 1987 and as of January 1, 2010, headquartered on the campus of Oklahoma state university in Stillwater, Oklahoma.
K. “System certification number” means the unique number issued by the department that identifies the certified geothermal ground-coupled heat pump system.
L. “Taxpayer” means an individual subject to the tax imposed by the Income Tax Act, NMSA 1978, Section 7-2-1 et seq.
M. “Taxpayer identification number” means the taxpayer’s nine digit social security number.
N. “Tax credit” means the New Mexico state tax credit for geothermal ground-coupled heat pumps as described in 3.3.32 NMAC.

[3.3.32.7 NMAC - N, 09/15/2010]

3.3.32.8 - GENERAL PROVISIONS
A. Only a taxpayer who is the owner of a geothermal ground-coupled heat pump system that is purchased and is installed in a residence, business or agricultural enterprise in New...
Mexico on or after January 1, 2010, but before December 31, 2020 may receive a certificate of eligibility for a tax credit.

B. Only one application package shall be filed per geothermal ground-coupled heat pump system. If more than one taxpayer owns an interest in the property where the geothermal ground-coupled heat pump system is installed as a member of a partnership or other business association, a taxpayer may only claim a tax credit in proportion to that taxpayer’s interest in the partnership or association. The application package shall specify the interest each taxpayer has in the property. In the event that there is more than one taxpayer that owns an interest in the property where the geothermal ground-coupled heat pump system is installed:

1. each such taxpayer applying for a tax credit must be identified as an applicant on the application package;
2. each such taxpayer applying for a tax credit must provide the required taxpayer information as required by 3.3.32.9 NMAC and the application form;
3. each such taxpayer applying for a tax credit must sign the application; and
4. the department shall issue one certificate of eligibility per taxpayer that reflects the amount of the tax credit to which the taxpayer is entitled in accordance with the taxpayer’s interest in the property, as set forth in the application.

C. 3.3.32 NMAC applies to geothermal ground-coupled heat pump systems for personal income tax only; the rules for corporate income tax geothermal ground-coupled heat pump system tax credit are at 3.4.19 NMAC.

D. The tax credit certificate may be issued for up to 30 percent of the purchase and installation costs of the geothermal ground-coupled heat pump system but may not exceed $9,000.

E. The annual cap is $2,000,000. When the $2,000,000 annual cap is reached, based on all certificates of eligibility the department has issued, the department shall:

1. if part of the eligible tax credit is within the annual cap and part is over the annual cap, issue a certificate of eligibility for the amount under the annual cap for the applicable tax year and issue a certificate of eligibility for the balance for the next subsequent tax year in which such tax credits are available; except
2. if no tax credit funds are available, issue a certificate of eligibility for the next subsequent tax year in which such credits are available, except for the last taxable year when the tax credit is in effect.

3.3.32.8 NMAC - N, 09/15/2010

3.3.32.9 - APPLICATION

A. To apply for the tax credit an applicant shall submit a complete application package to the division. An applicant may obtain the tax credit application form and system installation form from the division to submit as part of the package.

B. An application package shall include a completed tax credit application form and written attachments for a geothermal ground-coupled heat pump system. The applicant shall submit the tax credit application form together with all attachments required as a complete application package. An applicant shall submit one application package for each geothermal ground-coupled heat pump system. All material submitted in the application package shall be provided on 8½-inch x 11-inch paper.

C. The completed application form shall include the following information:

1. the taxpayer’s name, mailing address, telephone number and social security number;
2. the address where the geothermal ground-coupled heat pump system is installed.
located;

(3) the geothermal ground-coupled heat pump system’s type and description;
(4) the date the geothermal ground-coupled heat pump system started continuous operation;
(5) the accredited installer’s name, address, telephone number, license category and license number;
(6) the accredited installer’s documentation of IGSHPA “Accredited Installer Workshop” certification;
(7) the net cost of equipment, materials and labor of the geothermal ground-coupled heat pump system, excluding the expenses and income listed in 3.3.32.13 NMAC;
(8) a statement, signed and dated by the applicant, which signature may be electronic if approved by the department, agreeing that:
   (a) all information provided in the application package is true and correct;
   (b) applicant has read the certification requirements contained in 3.3.32 NMAC;
   (c) applicant understands that there are annual aggregate tax credit limits in place for geothermal ground-coupled heat pump systems;
   (d) applicant understands that the department must approve the application package before the applicant is eligible for a tax credit;
   (e) applicant agrees to make changes the department requires to the geothermal ground-coupled heat pump system for compliance with 3.3.32 NMAC; and
   (f) to ensure compliance with 3.3.32 NMAC, applicant agrees to allow the division or its authorized representative to inspect the geothermal ground-coupled heat pump system that is described in the application package at any time after the submission of the application package with not less than five business days notice to the applicant; and
(9) a system certification number the division assigns to the application.

D. The application package shall meet 3.3.32 NMAC’s requirements and be materially complete.

E. The application package shall include the following information provided as attachments:

(1) a copy of the most recent property tax bill to the taxpayer for the residence where the geothermal ground-coupled heat pump system is located;
(2) a copy of the invoice of itemized equipment and labor costs for the geothermal ground-coupled heat pump system;
(3) a copy of the geothermal ground-coupled heat pump system’s design schematic and technical specifications as described in 3.3.32 NMAC;
(4) a photograph of the geothermal ground-coupled heat pump system after installation is completed;
(5) a completed system installation form;
(6) a completed taxpayer and accredited installer statement, with information about the geothermal ground-coupled heat pump that includes:
   (a) manufacturer or supplier of system components and the system components’ model numbers;
   (b) number of well borings (if applicable);
   (c) a description of horizontal trenching (if applicable);
   (d) a description of a water source system component (if applicable);
(7) if the system was installed using vertical or horizontal directional
boreholes, the applicant shall provide the following information:

(a) drilling operator;
(b) office of the state engineer exploratory permit number and approval date (if required);
(c) drilling method;
(d) borehole diameter;
(e) number of boreholes drilled;
(f) general description of subsurface geology, or copies of drilling logs;
(g) depth of the boreholes;
(h) distance between boreholes;
(i) depth to ground water (indicate if ground water not encountered);
(j) whether the system is an “open” or “closed” loop design; and

(8) if the system was installed using horizontal trenching, the applicant shall provide the following information:

(a) length, width and depth of the trench or trenches; and
(b) general description of subsurface geology.

F. The completed system installation form shall include the following information:

(1) printed name of the taxpayer who is identified on the application form;
(2) printed name, title and telephone number of the accredited installer who signs the system installation form;
(3) printed name, title and telephone number of the building code authority’s authorized representative, if applicable, who approves the system installation form;
(4) date on which the geothermal ground-coupled heat pump system installation was complete and ready to operate;
(5) a statement that the accredited installer has signed and dated, which may be a form of electronic signature if approved by the department, certifying that:
   (a) the geothermal ground-coupled heat pump system was installed in full compliance with all applicable federal, state and local government statutes or ordinances, rules or regulations and codes and standards that are in effect at the time of installation;
   (b) the accredited installer has read 3.3.32 NMAC’s certification requirements;
   (c) the installed geothermal ground-coupled heat pump system will work properly with regular maintenance; and
   (d) the accredited installer provided written operations and maintenance instructions to the applicant and posted a one-page summary of these instructions in a sheltered accessible location acceptable to the taxpayer and that is near or at the geothermal ground-coupled heat pump system’s components;
(6) documentation of the manufacturer’s listed coefficient of performance or efficiency ratio for the heat pump equipment; and
(7) documentation of the total geothermal ground-coupled heat pump system size.

G. The application form shall request that the applicant provide the following optional information:

(1) taxpayer’s email address; and
(2) contractor’s email address.

H. The application form shall include optional selections where the applicant can indicate interest in allowing the department to take the following actions. Selection of such
options by the applicant shall not create in the department an obligation to take such action:

(1) adding energy monitoring equipment to the geothermal ground-coupled heat pump system;
(2) conducting an analysis of geothermal ground-coupled heat pump system operation and performance; or
(3) conducting an analysis of taxpayer’s utility bill records.

[3.3.32.9 NMAC - N, 09/15/2010]

3.3.32.10 - APPLICATION REVIEW PROCESS

A. The department shall consider applications in the order received, according to the day they are received, but not the time of day. If the department approves applications received on the same day and the applications would exceed the annual cap, then the department will divide the available tax credit among those applications on a prorated system cost basis.

B. The division shall review the application package to calculate the tax credit and check accuracy of the applicant’s documentation and shall determine whether the department certifies the geothermal ground-coupled heat pump system.

C. If an application package fails to meet a requirement or is materially incomplete, the department shall disapprove the application. The department’s disapproval letter shall state the reasons why the department disapproved the application. The applicant may resubmit the application package for the disapproved project. The division shall place the resubmitted application in the review schedule as if it were a new application.

D. If the division finds that the application package meets 3.3.32 NMAC’s requirements and a tax credit is available, the department shall certify the applicant’s geothermal ground-coupled heat pump system and documents the taxpayer as eligible for a tax credit. If a tax credit is not available in the taxable year of certification of the geothermal ground-coupled heat pump system submitted in the application package, the division shall place the taxpayer on a waiting list for inclusion in the following taxable year, if a tax credit remains available. The department shall provide approval through written notification to the applicant. The notification shall include the taxpayer’s contact information, social security number, system certification number, net system cost eligible for the tax credit, the tax credit amount and, if applicable waiting list status.

E. The division shall report to the taxation and revenue department the information required to verify, process and distribute each tax credit by providing a copy of the department’s approval notification.

[3.3.32.10 NMAC - N, 09/15/2010]

3.3.32.11 - SAFETY, CODES AND STANDARDS

A. Geothermal ground-coupled heat pump systems that the department may certify shall meet the following minimum requirements:

(1) compliance with the latest adopted version of all applicable federal, state and local government statutes or ordinances, rules or regulations and codes and standards that are in effect at the time that the applicant submits the application package including design, permitting and installation in full compliance with all applicable provisions of the New Mexico Plumbing Code (14.8.2 NMAC), the New Mexico Mechanical Codes (14.9.2 - 5 NMAC), the New Mexico General Construction Building Codes (14.7.2 - 8 NMAC) and any amendments to these codes adopted by a political subdivision that has validly exercised its planning and permitting authority under NMSA 1978, Sections 3-17-6 and 3-18-6; and

(2) compliance with all applicable utility company or heating fuel vendor...
requirements, if the system being served with a geothermal ground-coupled heat pump system is also served by utility electricity or a heating fuel.

B. The application package shall include the following information concerning building codes:

(1) a statement that the building code authority’s authorized representative has signed and dated, which may be a form of electronic signature if approved by the department, that the geothermal ground-coupled heat pump system was installed in full compliance with all applicable codes; or

(2) if the applicant is unable to obtain a signed and dated statement from the building code authority’s authorized representative on the system installation form, then the applicant may provide one of the following instead:

(a) a photograph or copy of the permit tag clearly identifying the building code authority’s authorized representative’s signature, the date and the permit number;
(b) an official document from the building code authority that includes:
   (i) agency’s name;
   (ii) authorized representative’s name, title, telephone number and signature;
   (iii) date of authorized representative’s signature; and
   (iv) permit number; or
(c) a web-based application the building code authority approves.

[3.3.32.11 NMAC - N, 09/15/2010]

3.3.32.12 - SYSTEM APPLICATIONS AND LISTS OF ELIGIBLE COMPONENTS
A. Geothermal ground-coupled heat pump systems that the department may certify shall meet the following requirements:

(1) be made of new equipment, components and materials;
(2) have a written minimum two year warranty provided by the contractor on parts, equipment and labor with the following exceptions:
   (a) the warranty provided by the contractor on each specific piece of equipment shall not exceed the duration and conditions of the warranty provided by the manufacturer of the equipment against defects in materials and workmanship; and
   (b) the owner of the geothermal ground-coupled heat pump system may bear the actual cost of shipping the product for the repair and replacement;
(3) be a complete system that collects and distributes geothermal energy to the residence, business or agricultural enterprise in New Mexico that it serves;
(4) have a minimum coefficient of performance of three and four-tenths or an efficiency ratio of 16 or greater; and
(5) be a minimum one-ton system size.

B. Geothermal ground-coupled heat pump systems or their portions that the department shall not certify are as follows:

(1) a system or portion of a system that would be present if the geothermal ground-coupled heat pump system was not installed;
(2) a system that is not connected to a structure or foundation and does not serve a permanent end use energy load or is not permanently located in New Mexico;
(3) a system not serving an end use energy load; or
(4) a system or portion of a system that replaces a system or portion of a system the department has certified in a previous application for a tax credit.
C. System components and installation processes that the department may include in the cost calculation and certify include:

(1) the system applications of geothermal space heating, geothermal air heating, geothermal process heating, geothermal space cooling or combinations of geothermal system applications;
(2) collectors;
(3) pumps;
(4) fans;
(5) storage tanks;
(6) buffer tanks;
(7) expansion tanks;
(8) expansion valves;
(9) valves;
(10) “txv” valves;
(11) three-way valves;
(12) refrigerant compressors;
(13) chill water tanks;
(14) refrigerant reversing valves;
(15) controllers;
(16) heat exchangers;
(17) compressors;
(18) compressor gas;
(19) flow center circulators;
(20) tubing;
(21) tubing u-bend connections;
(22) tubing connections and fittings;
(23) manifolds;
(24) supply headers;
(25) expansion metering devices;
(26) desuperheaters;
(27) hot water tanks;
(28) heat exchange refrigerant;
(29) reverse return headers;
(30) thermostats;
(31) evaporators;
(32) borehole grout;
(33) borehole backfill sand or other medium;
(34) turnarounds;
(35) air handlers;
(36) above-ground fluid coolers;
(37) thermal conductivity testing; and
(38) all materials and costs associated with vertical well drilling and horizontal trenching including well casing and tubing.

[3.3.32.12 NMAC - N, 09/15/2010]

3.3.32.13 - CALCULATING THE GEOTHERMAL GROUND-COUPLED HEAT PUMP SYSTEM COST

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

(1) expenses, including but not limited to:
   (a) unpaid labor or the applicant’s labor;
   (b) unpaid equipment or materials;
   (c) land costs or property taxes;
   (d) costs of structural, surface protection and other functions in building elements that would be included in building construction if a geothermal ground-coupled heat pump system were not installed;
   (e) mortgage, lease or rental costs of the residence, business or agricultural enterprise;
   (f) legal and court costs;
   (g) research fees or patent search fees;
   (h) fees for use permits or variances;
   (i) membership fees;
   (j) financing costs or loan interest;
   (k) marketing, promotional or advertising costs;
   (l) repair, operating or maintenance costs;
   (m) extended warranty costs;
   (n) system visual barrier costs;
   (o) adjacent structure modification costs;
   (p) vegetation maintenance costs; and

(2) income, including:
   (a) payments the 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, if applicable.

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

[3.3.32.13 NMAC - N, 09/15/2010]

3.3.32.14 - CLAIMING THE TAX CREDIT

A. To claim the tax credit, a taxpayer owning a geothermal ground-coupled heat pump system that the department has certified shall submit to the taxation and revenue department a claim, which shall consist of the certificate of eligibility the department issued to the taxpayer, a completed claim form the taxation and revenue department has approved and any other information the taxation and revenue department requires.

B. If the amount of tax credit claimed exceeds the taxpayer’s individual income tax liability, the taxpayer may carry the excess forward for up to 10 consecutive taxable years.

[3.3.32.14 NMAC - N, 09/15/2010]
7-2-18.25. ADVANCED ENERGY INCOME TAX CREDIT.--

A. The tax credit that may be claimed pursuant to this section may be referred to as the "advanced energy income tax credit".

B. A taxpayer who holds an interest in a qualified generating facility located in New Mexico and who files an individual New Mexico income tax return may claim an advanced energy income tax credit in an amount equal to six percent of the eligible generation plant costs of a qualified generating facility, subject to the limitations imposed in this section. The tax credit claimed shall be verified and approved by the department.

C. An entity that holds an interest in a qualified generating facility may request a certificate of eligibility from the department of environment to enable the requester to apply for an advanced energy income tax credit. The department of environment:

(1) shall determine if the facility is a qualified generating facility;
(2) shall require that the requester provide the department of environment with the information necessary to assess whether the requester's facility meets the criteria to be a qualified generating facility;
(3) shall issue a certificate to the requester stating that the facility is or is not a qualified generating facility within one hundred eighty days after receiving all information necessary to make a determination;
(4) shall:
   (a) issue a schedule of fees in which no fee exceeds one hundred fifty thousand dollars ($150,000); and
   (b) deposit fees collected pursuant to this paragraph in the state air quality permit fund created pursuant to Section 74-2-15 NMSA 1978; and
(5) shall report annually to the appropriate interim legislative committee information that will allow the legislative committee to analyze the effectiveness of the advanced energy tax credits, including the identity of qualified generating facilities, the energy production means used, the amount of emissions identified in this section reduced and removed by those qualified generating facilities and whether any requests for certificates of eligibility could not be approved due to program limits.

D. A taxpayer who holds an interest in a qualified generating facility may be allocated the right to claim the advanced energy income tax credit without regard to the taxpayer's relative interest in the qualified generating facility if:

(1) the business entity making the allocation provides notice of the allocation and the taxpayer's interest in the qualified generating facility to the department on forms prescribed by the department;
(2) allocations to the taxpayer and all other taxpayers allocated a right to claim the advanced energy tax credit shall not exceed one hundred percent of the advanced energy tax credit allowed for the qualified generating facility; and
(3) the taxpayer and all other taxpayers allocated a right to claim
the advanced energy tax credits collectively own at least a five percent interest in the qualified generating facility.

E. To claim the advanced energy income tax credit, a taxpayer shall submit with the taxpayer's New Mexico income tax return a certificate of eligibility from the department of environment stating that the taxpayer may be eligible for advanced energy tax credits. The taxation and revenue department shall provide credit claims forms. A credit claim form shall accompany any return in which the taxpayer wishes to apply for an approved credit, and the claim shall specify the amount of credit intended to apply to each return. The taxation and revenue department shall determine the amount of advanced energy income tax credit for which the taxpayer may apply.

F. Upon receipt of the notice of an allocation of the right to claim all or a portion of the advanced energy income tax credit, the department shall verify the allocation due to the recipient.

G. 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 advanced energy income tax credit that would have been allowed on a joint return.

H. The total amount of all advanced energy tax credits claimed shall not exceed the total amount determined by the department to be allowable pursuant to this section, the Corporate Income and Franchise Tax Act and Section 7-9G-2 NMSA 1978.

I. Any balance of the advanced energy income tax credit that the taxpayer is approved to claim may be claimed by the taxpayer as an advanced energy combined reporting tax credit allowed pursuant to Section 7-9G-2 NMSA 1978. If the advanced energy income tax credit exceeds the amount of the taxpayer's tax liabilities pursuant to the Income Tax Act and Section 7-9G-2 NMSA 1978 in the taxable year in which it is claimed, the balance of the unpaid credit may be carried forward for ten years and claimed as an advanced energy income tax credit or an advanced energy combined reporting tax credit. The advanced energy income tax credit is not refundable.

J. A taxpayer claiming the advanced energy income tax credit pursuant to this section is ineligible for credits pursuant to the Investment Credit Act or any other credit that may be taken pursuant to the Income Tax Act or credits that may be taken against the gross receipts tax, compensating tax or withholding tax for the same expenditures.

K. The aggregate amount of all advanced energy tax credits that may be claimed with respect to a qualified generating facility shall not exceed sixty million dollars ($60,000,000).

L. As used in this section:

1) "advanced energy tax credit" means the advanced energy income tax credit, the advanced energy corporate income tax credit and the advanced energy combined reporting tax credit;

2) "coal-based electric generating facility" means a new or repowered generating facility and an associated coal gasification facility, if any, that uses coal to generate electricity and that meets the following specifications:

   a) emits the lesser of: 1) what is achievable with the best available control technology; or 2) thirty-five thousandths pound per million
British thermal units of sulfur dioxide, twenty-five thousandths pound per million British thermal units of oxides of nitrogen and one hundredth pound per million British thermal units of total particulates in the flue gas;

(b) removes the greater of: 1) what is achievable with the best available control technology; or 2) ninety percent of the mercury from the input fuel;

(c) captures and sequesters or controls carbon dioxide emissions so that by the later of January 1, 2017 or eighteen months after the commercial operation date of the coal-based electric generating facility, no more than one thousand one hundred pounds per megawatt-hour of carbon dioxide is emitted into the atmosphere;

(d) all infrastructure required for sequestration is in place by the later of January 1, 2017 or eighteen months after the commercial operation date of the coal-based electric generating facility;

(e) includes methods and procedures to monitor the disposition of the carbon dioxide captured and sequestered from the coal-based electric generating facility; and

(f) does not exceed a name-plate capacity of seven hundred net megawatts;

(3) "eligible generation plant costs" means expenditures for the development and construction of a qualified generating facility, including permitting; site characterization and assessment; engineering; design; carbon dioxide capture, treatment, compression, transportation and sequestration; site and equipment acquisition; and fuel supply development used directly and exclusively in a qualified generating facility;

(4) "entity" means an individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, limited liability company, limited liability partnership, joint venture, syndicate or other association or a gas, water or electric utility owned or operated by a county or municipality;

(5) "geothermal electric generating facility" means a facility with a name-plate capacity of one megawatt or more that uses geothermal energy to generate electricity, including a facility that captures and provides geothermal energy to a preexisting electric generating facility using other fuels in part;

(6) "interest in a qualified generating facility" means title to a qualified generating facility; a leasehold interest in a qualified generating facility; an ownership interest in a business or entity that is taxed for federal income tax purposes as a partnership that holds title to or a leasehold interest in a qualified generating facility; or an ownership interest, through one or more intermediate entities that are each taxed for federal income tax purposes as a partnership, in a business that holds title to or a leasehold interest in a qualified generating facility;

(7) "name-plate capacity" means the maximum rated output of the facility measured as alternating current or the equivalent direct current measurement;

(8) "qualified generating facility" means a facility that begins construction not later than December 31, 2015 and is:
(a) a solar thermal electric generating facility that begins construction on or after July 1, 2007 and that may include an associated renewable energy storage facility;

(b) a solar photovoltaic electric generating facility that begins construction on or after July 1, 2009 and that may include an associated renewable energy storage facility;

(c) a geothermal electric generating facility that begins construction on or after July 1, 2009;

(d) a recycled energy project if that facility begins construction on or after July 1, 2007; or

(e) a new or repowered coal-based electric generating facility and an associated coal gasification facility;

(9) "recycled energy" means energy produced by a generation unit with a name-plate capacity of not more than fifteen megawatts that converts the otherwise lost energy from the exhaust stacks or pipes to electricity without combustion of additional fossil fuel;

(10) "sequester" means to store, or chemically convert, carbon dioxide in a manner that prevents its release into the atmosphere and may include the use of geologic formations and enhanced oil, coalbed methane or natural gas recovery techniques;

(11) "solar photovoltaic electric generating facility" means an electric generating facility with a name-plate capacity of one megawatt or more that uses solar photovoltaic energy to generate electricity; and

(12) "solar thermal generating facility" means an electric generating facility with a name-plate capacity of one megawatt or more that uses solar thermal energy to generate electricity, including a facility that captures and provides solar energy to a preexisting electric generating facility using other fuels in part.

(Laws 2009, Chapter 279, Section 1)
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 beginning on or after January 1, 2011 and ending prior to January 1, 2030 may apply for, 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. If the requirements of this section have been complied with, the department shall issue to the taxpayer a document granting an agricultural biomass income tax credit. The document shall be numbered for identification and declare its date of issuance and the amount of the tax credit allowed pursuant to this section. The document may be submitted by the taxpayer with that taxpayer's income tax return or may be sold, exchanged or otherwise transferred to another taxpayer. The parties to such a transaction shall notify the department of the sale, exchange or transfer within ten days of the sale, exchange or transfer.

C. Any portion of the agricultural biomass income tax credit that remains unused in a taxable year may be carried forward for a maximum of four consecutive taxable years following the taxable year in which the credit originates until fully expended.

D. 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.

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 credit that would have been allowed on a joint return.

F. The energy, minerals and natural resources department shall adopt rules establishing procedures to provide certification of transportation of agricultural biomass to a qualified facility that uses agricultural biomass to generate electricity or make biocrude or other liquid or gaseous fuel for commercial use for purposes of obtaining an agricultural biomass income tax credit. The rules may be modified as determined necessary by the energy, minerals and natural resources department to determine accurate recording of the quantity of agricultural biomass transported and used for the purpose allowable in this section.

G. 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.

H. The department shall limit the annual combined total of all agricultural biomass income tax credits and all agricultural biomass corporate income tax credits allowed to a maximum of five million dollars ($5,000,000). Applications for the credit shall be considered in the order received by the department.

I. 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.

J. The department shall compile an annual report on the agricultural biomass income tax credit that shall include the number of taxpayers approved by the department to receive the credit, the aggregate amount of credits approved and any other information necessary to evaluate the credit. The department shall present the report to the revenue stabilization and tax policy committee and the legislative finance committee with an analysis of the cost of the tax credit.

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 2020, Chapter 20, Section 1)

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 dairy or feedlot that collects animal waste for the purpose of transporting that material to a facility where it will be used to generate electricity, make biocrude or other liquid or gaseous fuel for commercial use.

C. “Applicant” means a taxpayer that transports agricultural biomass to a qualified energy producing facility and who desires to have the department issue a certificate of transportation to be used in applying for an agricultural biomass 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.
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 dairy 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 categories (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, 2020. 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, 2020.

B. The amount of the agricultural biomass income tax credit is calculated at five dollars per wet ton. The maximum amount of the annual combined total of all agricultural biomass income tax credits and all agricultural biomass corporate income tax credits allowed is five million dollars.

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

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. CREDIT--PHYSICIAN PARTICIPATION IN CANCER TREATMENT CLINICAL TRIALS.--

A. A taxpayer who files an individual New Mexico income tax return, who is not a dependent of another taxpayer, who is an oncologist who is a physician licensed pursuant to the Medical Practice Act and whose practice is located in rural New Mexico may claim, and the department may allow, a tax credit of one thousand dollars ($1,000) for each patient participating in a cancer clinical trial under the taxpayer's supervision for a maximum credit allowed for all cancer clinical trials conducted by that taxpayer during the taxable year of four thousand dollars ($4,000). The tax credit provided in this section may be referred to as the "cancer clinical trial tax credit".

B. The purpose of the cancer clinical trial tax credit is to encourage physicians in New Mexico to participate as clinical trial investigators by performing cancer clinical trials of new cancer treatments in New Mexico and making cancer clinical trials more readily available to cancer patients in the state.

C. The cancer clinical trial tax credit may only be claimed for the taxable year in which the physician participates as an investigator in a clinical trial.

D. A partnership or business association in which one or more members qualifies for a cancer clinical trial tax credit may claim only one cancer clinical trial tax credit. The total cancer clinical trial tax credit allowed by the department for all the members of a partnership or business association shall not exceed the amount of cancer clinical trial tax credit that could have been claimed by one physician conducting, supervising or participating in the cancer clinical trial for which the credit is allowed.

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 cancer clinical trial tax credit that would have been allowed on a joint return.

F. The department shall compile an annual report that includes the number of taxpayers approved by the department to receive a cancer clinical trial tax credit in the taxable year, the amount of cancer clinical trial tax credits allowed in the taxable year, the number of patients who participated in the taxable year in cancer clinical trials and the locations of the cancer clinical trials for which cancer clinical trial tax credits were claimed.

G. As used in this section:

(1) "cancer clinical trial" means a clinical trial:

   (a) conducted for the purposes of the prevention of or the prevention of reoccurrence of cancer or the early detection or treatment of cancer for which no equally or more effective standard cancer treatment exists;

   (b) that is not designed exclusively to test toxicity or disease pathophysiology and has a therapeutic intent;

   (c) provided in this state as part of a scientific study of a new therapy or intervention and is for the prevention, prevention of reoccurrence, early detection, treatment or palliation of cancer in humans and
in which the scientific study includes all of the following: 1) specific goals; 2) a rationale and background for the study; 3) criteria for patient selection; 4) specific direction for administering the therapy or intervention and for monitoring patients; 5) a definition of quantitative measures for determining treatment response; 6) methods for documenting and treating adverse reactions; and 7) a reasonable expectation that the treatment will be at least as efficacious as standard cancer treatment;

(d) that is being conducted with approval of at least one of the following: 1) one of the federal national institutes of health; 2) a federal national institutes of health cooperative group or center; 3) the United States department of defense; 4) the federal food and drug administration in the form of an investigational new drug application; 5) the United States department of veterans affairs; or 6) a qualified research entity that meets the criteria established by the federal national institutes of health for grant eligibility;

(e) that is considered part of a cancer clinical trial;

(f) that has been reviewed and approved by an institutional review board that has an active federal-wide assurance of protection for human subjects; and

(g) in which the personnel conducting the clinical trial are working within their scope of practice, experience and training and are capable of providing the clinical trial because of their experience, training and volume of patients treated to maintain their expertise; and

(2) "rural New Mexico" means a class B county in which no municipality has a population of sixty thousand or more according to the most recent federal decennial census and includes the municipalities within that county.

(Laws 2011, Chapter 89, Section 1 – Applicable to taxable years beginning on or after January 1, 2012 but before January 1, 2015.)
7-2-18.28.-- VETERAN EMPLOYMENT TAX CREDIT.--

A. A taxpayer who is not a dependent of another individual and who employs a qualified military veteran in New Mexico is eligible for a credit against the taxpayer's tax liability imposed pursuant to the Income Tax Act in an amount up to one thousand dollars ($1,000) of the gross wages paid to each qualified military veteran by the taxpayer during the taxable year for which the return is filed. A taxpayer who employs a qualified military veteran for less than the full taxable year is eligible for a credit amount equal to one thousand dollars ($1,000) multiplied by the fraction of a full year for which the qualified military veteran was employed. The tax credit provided by this section may be referred to as the "veteran employment tax credit".

B. The purpose of the veteran employment tax credit is to encourage the full-time employment of qualified military veterans within two years of discharge from the armed forces of the United States.

C. A taxpayer may claim the veteran employment tax credit provided in this section for each taxable year in which the taxpayer employs one or more qualified military veterans; provided that the taxpayer may not claim the veteran employment tax credit for any individual qualified military veteran for more than one calendar year from the date of hire.

D. That portion of a veteran employment tax credit approved by the department that exceeds a taxpayer's income tax liability in the taxable year in which the veteran employment tax credit is claimed shall not be refunded to the taxpayer but may be carried forward for up to three years. The veteran employment tax credit shall not be transferred to another taxpayer.

E. A husband and wife filing separate returns for a taxable year for which they could have filed a joint return may each claim only one-half of the veteran employment tax credit that would have been claimed on a joint return.

F. A taxpayer may be allocated the right to claim a veteran employment tax credit in proportion to its ownership interest if the taxpayer owns an interest in a business entity that is taxed for federal income tax purposes as a partnership 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 Subsection A of this section.

G. The taxpayer shall submit to the department with respect to each employee for whom the veteran employment tax credit is claimed information required by the department with respect to the veteran's employment by the taxpayer during the taxable year for which the veteran employment tax credit is claimed, including information establishing that the employee is a qualified military veteran that can be used to determine that the employee was not also employed in the same taxable year by another taxpayer claiming a veteran employment tax credit for that employee pursuant to this section or the Corporate Income and Franchise Tax Act.

H. The department shall adopt rules establishing procedures to certify qualified military veterans for purposes of obtaining a veteran employment tax
credit. The rules shall ensure that not more than one veteran employment tax credit per qualified military veteran shall be allowed in a taxable year and that the credits allowed per qualified military veteran are limited to a maximum of one year's employment.

I. As used in this section, "qualified military veteran" means an individual who is hired within two years of receipt of an honorable discharge from a branch of the United States military, who works at least forty hours per week during the taxable year for which the veteran employment tax credit is claimed and who was not previously employed by the taxpayer prior to the individual's deployment.

(Laws 2012, Chapter 55, Section 1; Applicable to tax years beginning on or after January 1, 2012 and ending on or before January 1, 2017)
7-2-18.29.--2015 SUSTAINABLE BUILDING TAX CREDIT.--

A. The tax credit provided by this section may be referred to as the "2015 sustainable building tax credit". The 2015 sustainable building tax credit shall be available for the construction in New Mexico of a sustainable building, the renovation of an existing building in New Mexico into a sustainable building or the permanent installation of manufactured housing, regardless of where the housing is manufactured, that is a sustainable building; 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 tax credit provided in the Corporate Income and Franchise Tax Act or the 2021 sustainable building tax credit pursuant to the Income Tax Act or the Corporate Income and Franchise Tax Act has been claimed.

B. The purpose of the 2015 sustainable building 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 is eligible to be granted a 2015 sustainable building tax credit by the department if the taxpayer submits a document issued pursuant to Subsection K of this section with the taxpayer's income tax return.

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:

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<tr>
<td></td>
<td>Over 50,000</td>
<td></td>
</tr>
<tr>
<td></td>
<td>up to 500,000</td>
<td>$2.00</td>
</tr>
<tr>
<td>LEED-EB or CS Silver</td>
<td>First 10,000</td>
<td>$2.50</td>
</tr>
<tr>
<td></td>
<td>Next 40,000</td>
<td>$1.25</td>
</tr>
<tr>
<td></td>
<td>Over 50,000</td>
<td></td>
</tr>
</tbody>
</table>
LEED-EB or CS Gold

- First 10,000: $3.35
- Next 40,000: $1.40
- Over 50,000: $0.70

LEED-EB or CS Platinum

- First 10,000: $4.40
- Next 40,000: $2.30
- Over 50,000: $1.40

LEED-CI Silver

- First 10,000: $1.40
- Next 40,000: $0.70
- Over 50,000: $0.30

LEED-CI Gold

- First 10,000: $1.90
- Next 40,000: $0.80
- Over 50,000: $0.40

LEED-CI Platinum

- First 10,000: $2.50
- Next 40,000: $1.30
- Over 50,000: $0.80

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:

<table>
<thead>
<tr>
<th>Rating System/Level</th>
<th>Qualified Occupied Square Footage</th>
<th>Tax Credit per Square Foot</th>
</tr>
</thead>
<tbody>
<tr>
<td>LEED-H Silver or Build Green NM Silver</td>
<td>Up to 2,000</td>
<td>$3.00</td>
</tr>
<tr>
<td>LEED-H Gold or Build Green NM Gold</td>
<td>Up to 2,000</td>
<td>$4.50</td>
</tr>
<tr>
<td>LEED-H Platinum or Build Green NM Emerald</td>
<td>Up to 2,000</td>
<td>$6.50</td>
</tr>
<tr>
<td>Manufactured Housing</td>
<td>Up to 2,000</td>
<td>$3.00</td>
</tr>
</tbody>
</table>

F. A person that is a building owner may apply for a certificate of eligibility for the 2015 sustainable building tax credit from the energy, minerals and natural resources department after the construction, installation or renovation of the sustainable building is complete. Applications shall be considered in the order received. If the energy, minerals and natural resources department determines that the building owner meets the requirements of this subsection and that the building with respect to which the tax credit application is made meets the requirements of this section as a sustainable residential building or a sustainable commercial building, the energy, minerals and natural resources department may issue a certificate of eligibility to the building owner, subject to the limitations in...
3.3 NMAC

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 tax credit for which the building owner would be eligible. The energy, minerals and natural resources department may issue rules governing the procedure for administering the provisions of this subsection. If the certification level for the sustainable residential building is awarded on or after January 1, 2017 but prior to April 1, 2023, the energy, minerals and natural resources department may issue a certificate of eligibility to a building owner who is:

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

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

G. Except as provided in Subsection H of this section, the energy, minerals and natural resources department may issue a certificate of eligibility only if the total amount of 2015 sustainable building tax credits represented by certificates of eligibility issued by the energy, minerals and natural resources department pursuant to this section and pursuant to the Corporate Income and Franchise Tax Act shall not exceed in any calendar year an aggregate amount of:

(1) one million two hundred fifty thousand dollars ($1,250,000) with respect to sustainable commercial buildings;

(2) three million three hundred seventy-five thousand dollars ($3,375,000) with respect to sustainable residential buildings that are not manufactured housing; and

(3) three hundred seventy-five thousand dollars ($375,000) with respect to sustainable residential buildings that are manufactured housing.

H. For any taxable year that the energy, minerals and natural resources department determines that applications for sustainable building tax credits for any type of sustainable building pursuant to Paragraph (1), (2) or (3) of Subsection G of this section are less than the aggregate limit for that type of sustainable building for that taxable year, the energy, minerals and natural resources department shall allow the difference between the aggregate limit and the applications to be added to the aggregate limit of another type of sustainable building for which applications exceeded the aggregate limit for that taxable year. Any excess not used in a taxable year shall not be carried forward to subsequent taxable years.

I. Installation of a solar thermal system or a photovoltaic system eligible for the solar market development tax credit pursuant to Section 7-2-18.14 NMSA 1978 may not be used as a component of qualification for the rating system certification level used in determining eligibility for the 2015 sustainable building tax credit, unless a solar market development tax credit pursuant to Section 7-2-18.14 NMSA 1978 has not been claimed with respect to that system and the building owner and the taxpayer claiming the 2015 sustainable building tax credit certify that such a tax credit will not be claimed with respect to that system.
J. To be eligible for the 2015 sustainable building tax credit, the building owner shall provide to the taxation and revenue department a certificate of eligibility issued by the energy, minerals and natural resources department pursuant to the requirements of Subsection F of this section and any other information the taxation and revenue department may require to determine the amount of the tax credit for which the building owner is eligible.

K. If the requirements of this section have been complied with, the department shall issue to the building owner a document granting a 2015 sustainable building tax credit. The document shall be numbered for identification and declare its date of issuance and the amount of the tax credit allowed pursuant to this section. The document may be submitted by the building owner with the taxpayer's income tax return, if applicable, or may be sold, exchanged or otherwise transferred to another taxpayer. The parties to such a transaction shall notify the department of the sale, exchange or transfer within ten days of the sale, exchange or transfer.

L. If the approved amount of a 2015 sustainable building tax credit for a taxpayer in a taxable year represented by a document issued pursuant to Subsection K of this section is:

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

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

M. If the sum of all 2015 sustainable building tax credits that can be applied to a taxable year for a taxpayer, calculated according to Paragraph (1) or (2) of Subsection L of this section, exceeds the taxpayer's income tax liability for that taxable year, the excess may be carried forward for a period of up to seven years.

N. A taxpayer who otherwise qualifies and claims a 2015 sustainable building tax credit with respect to a sustainable building owned by a partnership or other business association of which the taxpayer is a member may claim a credit only in proportion to that taxpayer's interest in the partnership or association. The total credit claimed in the aggregate by all members of the partnership or association with respect to the sustainable building shall not exceed the amount of the credit that could have been claimed by a sole owner of the property.

O. 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 tax credit that would have been allowed on a joint return.

P. The department shall compile an annual report on the 2015 sustainable building tax credit created pursuant to this section that shall
include the number of taxpayers approved by the department to receive the
tax credit, the aggregate amount of tax credits approved and any other
information necessary to evaluate the effectiveness of the tax credit.
Beginning in 2019 and every three years thereafter that the credit is in effect,
the department shall compile and present the annual reports to the revenue
stabilization and tax policy committee and the legislative finance committee
with an analysis of the effectiveness and cost of the tax credit and whether
the tax credit is performing the purpose for which it was created.

Q. 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.

(2021, Chapter 84, Section 1)

3.3.34.7 - DEFINITIONS

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

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

C. “Application package” means the documents an applicant submits to the department to apply for a certificate of eligibility for a new sustainable building tax credit.

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

E. “Build green New Mexico rating system” means the certification standards adopted by build green New Mexico in November 2014, which includes water conservation standards.

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

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

H. “Certification level” means one of the following:
   (1) LEED-H silver or build green New Mexico silver;
   (2) LEED-H gold or build green New Mexico gold; or
   (3) LEED-H platinum or build green New Mexico emerald.

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

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

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

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

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

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

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

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

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

R. “LEED-H” means the LEED rating system for homes at the time of project registration.

S. “Manufactured housing” means a multisectioned home that is:
   (1) a manufactured home or modular home;
   (2) a single-family dwelling with a heated area of at least 36 feet by 24 feet and a total area of at least 864 square feet;
   (3) constructed in a factory to the standards of the U.S. department of housing and urban development, the National Manufactured Housing Construction and Safety Standards Act of 1974 and the housing and urban development zone code 2 or New Mexico construction codes up to the date of the unit’s construction; and
   (4) installed consistent with the Manufactured Housing Act and rules adopted pursuant to that act relating to permanent foundations.

T. “New sustainable building tax credit” for the purposes of 3.3.34 NMAC means the personal income tax credit the state of New Mexico issues to an applicant for a sustainable residential building.

U. “Person” does not include state, local government, public school districts or tribal agencies.

V. “Qualified occupied square footage” means the occupied spaces of the building as determined by:
   (1) the U.S. green building council for those buildings obtaining LEED certification; or
   (2) the administrators of the build green New Mexico rating system for those homes obtaining build green New Mexico certification; or
   (3) the U.S. environmental protection agency for energy star certified manufactured homes.

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

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

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

Z. “Sustainable residential building” means:
   (1) a building used as a single-family residence as registered and certified under the build green New Mexico or LEED-H rating system that:
      (a) is certified by the U.S. green building council as LEED-H silver or higher; or by build green New Mexico as silver or higher;
      (b) has achieved a home energy rating system index of 60 or lower as developed by the residential energy services network;
      (c) has indoor plumbing fixtures and water-using appliances, that on average, have flow rates equal to or lower than the flow rates required for certification by WaterSense; when plumbing fixtures, plumbing features, and water-using appliances are used that have no known equivalent flow rates to WaterSense labeled products, but in aggregate combined exceed the whole-house consumption of a home with only WaterSense plumbing fixtures, then the water efficiency rating score shall be used to prove the whole-house water efficiency rating.
consumption is equal to or lower than a home with only plumbing fixtures certified by WaterSense;

(d) if landscape area is available at the front of the property, has at least one water line outside the building below the frost line that may be connected to a drip irrigation system; and

(e) if landscape area is available at the rear of the property, has at least one water line outside the building below the frost line that may be connected to a drip irrigation system; or

(2) manufactured housing that is energy star qualified by the U.S. environmental protection agency.

AA. “Taxable year” means the calendar year or fiscal year upon the basis of which the net income is computed under the 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.

DD. “Tribal” means of, belonging to or created by a federally recognized Indian nation, tribe or pueblo.

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

FF. “WaterSense” means a program created by the federal environmental protection agency that certifies water-using products that meet the environmental protection agency’s criteria for efficiency and performance.

[3.3.34.7 NMAC - N, 12/30/15]

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 to be a sustainable residential building and that receives certification on or after January 1, 2017 may receive a certificate of eligibility for a new sustainable building tax credit. A subsequent purchaser of a sustainable residential building may receive a certificate if no tax credit has previously been claimed for the building.

B. The annual total amount in a calendar year of the new sustainable building tax credit pursuant to the Income Tax Act and the Corporate Income and Franchise Tax Act available to taxpayers owning sustainable residential buildings is limited to $3,375,000 for sustainable residential buildings that are not manufactured housing. When the $3,375,000 cap for sustainable residential buildings is reached, based on all certificates of eligibility the department has issued, the department shall:

(1) if part of the eligible new sustainable building tax credit is within the annual cap and part is over the annual cap, issue a certificate of eligibility for the amount under the annual cap for the applicable tax year and issue a certificate of eligibility for the balance for the subsequent tax year; or

(2) the department may issue certificates of eligibility to applicants who meet the requirements for the new sustainable residential buildings tax credit in a taxable year when applications for the new sustainable residential buildings tax credit exceed the annual cap and applications for the new sustainable commercial buildings or manufactured housing tax credits are under the annual cap for that type of sustainable building by March 1 of any year in which the tax credit is in effect; or

3.3 NMAC
(3) if no new sustainable building tax credit funds are available, issue a certificate of eligibility for the next subsequent tax year in which funds are available, except for the last taxable year when the new sustainable building tax credit is in effect.

C. There is a $375,000 annual cap for sustainable residential buildings that are manufactured housing.

D. In the event of a discrepancy between a requirement of 3.3.34 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 3.3.35 NMAC shall be submitted to the energy conservation and management division of the department.

[3.3.34.8 NMAC - N, 12/30/15]

3.3.34.9 - VERIFIER ELIGIBILITY

A. The department reviews the qualifications for verifiers of the build green New Mexico or LEED-H certifications, which shall be provided annually to the department, based on the following criteria:

(1) the verifier is independent from the homebuilders or homeowners that may apply for certification;

(2) the verifier has adequate staff and expertise to provide certification services, including:

(a) experience in green home building services;
(b) ability to enlist and serve builders and provide training, consulting and other guidance as necessary;
(c) a method of auditing the certification process to maintain adequate stringency; and
(d) ability to administer the program and report on the certifications, audits and other relevant information the department may request;

(3) the verifier can identify the geographic area being served; and

(4) the verifier provides a statement that expresses a commitment to promoting energy-efficient green building with the highest standard of excellence.

B. The department approves verifiers after an entity submits a written request to the department that includes documentation on how the entity meets the required criteria. The department notifies the entity of the reasons for disapproving eligibility.

C. The verifier shall notify the department 30 calendar days prior to making changes to its certification process or rating systems.

D. The department may rescind an existing verifier’s approval if it determines that the above criteria are not being met. The department notifies the verifier of the reasons for disapproving or rescinding eligibility.

(1) The department shall notify the verifier of the proposed rescission in writing. The verifier has the right to request in writing review of the decision to rescind the verifier’s approval. The verifier shall file a request for review within 20 calendar days after the department’s notice is sent. The verifier shall address the request to the division director and include the reasons that the department should not rescind the verifier’s approval. The director shall consider the request. The division director may hold a hearing and appoint a hearing officer to conduct the hearing. The division director shall send a final decision to the verifier within 20 calendar days after receiving the request or the date the hearing is held.

(2) The verifier may appeal in writing to the department’s secretary a division
director’s decision. The notice of appeal shall include the reasons that the secretary should overturn the division director’s decision. The 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 - N, 12/30/15]

3.3.34.10 - APPLICATION FOR THE NEW SUSTAINABLE BUILDING TAX CREDIT

A. In order to obtain the new sustainable building tax credit, a taxpayer shall apply for a certificate of eligibility with the department on a department-developed form. An applicant may obtain an application form from the department.

B. An application package shall include a completed application form and attachments as specified on the application form. The applicant shall submit the application form and required attachments at the same time. An applicant shall submit one application form for each sustainable residential building. The applicant shall submit all material in the application package on 8½ inch by 11 inch paper. If the applicant fails to submit the application form and required attachments at the same time on 8½ inch by 11 inch paper the department may consider the application incomplete.

C. An applicant shall submit a complete application package to the department no later than March 1 of the taxable year for which the applicant seeks the new sustainable building tax credit. If an applicant does not submit a complete application package by March 1, any remaining new sustainable residential building tax credit funds under the cap may be used in that taxable year for completed new sustainable commercial 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 residential building, including the property’s legal description;
5. whether the applicant was the building owner at time of certification or a subsequent purchaser;
6. the qualified occupied square footage of the sustainable residential building;
7. the rating system under which the sustainable residential building was certified;
8. the certification level achieved, if applicable;
9. the HERS index;
10. documentation that applicant meets water efficiency standards to comply with water efficiency requirements of this program;
11. the date of rating system certification;
12. a statement signed and dated by the applicant, which may be a form of electronic signature if approved by the department, agreeing that:
   a. all information provided in the application package is true and correct to the best of the applicant’s knowledge under penalty of perjury;

[3.3 NMAC - Page 194]
(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 new sustainable building tax credit or the energy reduction requirement achieved, the applicant has not applied for and will not apply for a solar market development tax credit;
(d) applicant understands that there are annual caps for the new sustainable building tax credit;
(e) applicant understands that the department must verify the documentation submitted in the application package before the department issues a certificate of eligibility for a new sustainable building tax credit; and
(f) applicant understands that the department issues a certificate of eligibility for the taxable year in which the sustainable residential building was certified or, if the new sustainable building tax credit’s annual cap has been reached, for the next taxable year in which funds are available; and

(13) a project number the department assigns to the tax credit application.

E. In addition to the application form, the application package shall consist of the following information provided as attachments:

(1) a copy of a deed, property tax bill or ground lease in the applicant’s name as of or after the date of certification for the address or legal description of the sustainable residential building;

(2) a copy of the rating system certification form;

(3) a copy of the final certification review checklist that shows the points achieved, if applicable;

(4) a copy of a HERS certificate, from a RESNET (or a rating network that has the same standards as RESNET) accredited HERS provider, using software RESNET lists as eligible for certification of the federal tax credit, showing the building has achieved a HERS index of 60 or lower; and

(5) other information the department needs to review the building project for the new sustainable building tax credit.

[3.3.34.10 NMAC - N, 12/30/15]

3.3.34.11 - APPLICATION REVIEW PROCESS

A. The department considers applications in the order received, according to the day they are received, but not the time of day.

B. The department approves or disapproves an application package following the receipt of the complete application package. The department disapproves an application that is not complete or correct. The department’s disapproval letter shall state the reasons why the department disapproved the application. The applicant may resubmit the application package for the disapproved project. The department places the resubmitted application in the review schedule as if it were a new application.

C. The department reviews the application package to calculate the maximum new sustainable building tax credit, check accuracy of the applicant’s documentation and determine whether the department issues a certificate of eligibility for the new sustainable building tax credit.

D. If an onsite solar system is used to meet the requirements of either the certification level applied for in the new sustainable building tax credit or the energy reduction requirement achieved, the department verifies that no person has applied for a solar market development tax credit for that solar system. If the department finds that a solar market development tax credit has
been approved for that solar system, the department shall disapprove the application for the new sustainable building tax credit. The applicant may submit a revised application package to the department that does not include the electricity projected to be generated by the solar system. The department places the resubmitted application in the review schedule as if it were a new application.

E. If the department finds that the application package meets the requirements and a new sustainable building tax credit is available, the department issues the certificate of eligibility for a new sustainable building tax credit. If a new sustainable building tax credit is partially available or not available, the department issues a certificate of eligibility for any amount that is available and a certificate of eligibility for the balance for the next taxable year, until the last taxable year when the new sustainable building tax credit is in effect. The notification shall include the taxpayer’s contact information, taxpayer identification number, certificate of eligibility number or numbers, the rating system certification level awarded to the building, the amount of qualified occupied square footage in the building, the new sustainable building tax credit amount or amounts and the new sustainable building tax credit’s taxable year or years.

[3.3.34.11 NMAC - N, 12/30/15]

3.3.34.12 - CALCULATING THE TAX CREDIT

A. The department calculates the maximum new sustainable building tax credit based on the qualified occupied square footage of the sustainable residential building, the rating system under which the applicant achieved certification and the certification level the applicant achieved. The tax credit for various square footages is specified in the chart below:

<table>
<thead>
<tr>
<th>LEED-H silver or build green New Mexico silver:</th>
</tr>
</thead>
<tbody>
<tr>
<td>up to 2,000 square feet</td>
</tr>
<tr>
<td>equals the qualified square footage less than or equal to 2,000</td>
</tr>
<tr>
<td>multiplied by $3.00</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>LEED-H gold or build green New Mexico gold:</th>
</tr>
</thead>
<tbody>
<tr>
<td>up to 2,000 square feet</td>
</tr>
<tr>
<td>equals the qualified square footage less than or equal to 2,000</td>
</tr>
<tr>
<td>multiplied by $4.50</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>LEED-H platinum or build green New Mexico emerald:</th>
</tr>
</thead>
<tbody>
<tr>
<td>up to 2,000 square feet</td>
</tr>
<tr>
<td>equals the qualified square footage less than or equal to 2,000</td>
</tr>
<tr>
<td>multiplied by $6.50</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>energy star manufactured housing:</th>
</tr>
</thead>
<tbody>
<tr>
<td>up to 2,000 square feet</td>
</tr>
<tr>
<td>equals the qualified square footage less than or equal to 2,000</td>
</tr>
<tr>
<td>multiplied by $3.00</td>
</tr>
</tbody>
</table>

B. The taxation and revenue department makes the final determination of the amount of the new sustainable building tax credit.

[3.3.34.12 NMAC - N, 12/30/15]

3.3.34.13 - CLAIMING THE STATE TAX CREDIT

To claim the new sustainable building tax credit, an applicant shall submit all certificates of eligibility to the taxation and revenue department within 30 days of the department’s issuance, along with a completed form provided by the taxation and revenue department, and any other information the taxation and revenue department requires.

[3.3.34.13 NMAC - N, 12/30/15]
3.3.35.7 - DEFINITIONS

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

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

C. “Application package” means the documents an applicant submits to the department to apply for a certificate of eligibility for a new sustainable building tax credit.

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

E. “Build green New Mexico rating system” means the certification standards adopted by build green New Mexico in November 2014, which includes water conservation standards.

F. “Building project” means a new construction or renovation project that will result in one or more sustainable commercial buildings.

G. “Building type” means the primary use of a building or section of a building as defined in target finder.

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

I. “Certification level” means one of the following:
   (1) LEED-H silver or build green New Mexico silver;
   (2) LEED-H gold or build green New Mexico gold; or
   (3) LEED-H platinum or build green New Mexico emerald.

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

K. “Division director” means the director of the department’s energy conservation and management division.

L. “Energy reduction requirements means”:
   (1) for a sustainable commercial building that is not a multifamily dwelling unit means beginning January 1, 2012, a sixty percent energy reduction based on the national average for that building type as published by the United States (U.S.) department of energy;
   (2) for a multifamily dwelling unit means that it has achieved a home energy rating system index of 60 or lower as developed by the residential energy services network.

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

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

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

P. “LEED certification” means the U.S. green building council’s verification that a building project has met certain prerequisites and performance benchmarks or credits within each category of a LEED rating system resulting in the issuance of a certification document.

Q. “LEED-CI” means the LEED rating system for commercial interiors.

R. “LEED-CS” means the LEED rating system for the core and shell of buildings.

S. “LEED-EB” means the LEED rating system for existing buildings.

T. “LEED-H” means the LEED rating system for homes at the time of project
U. “LEED-NC” means the LEED rating system for new buildings and major renovations.

V. “LEED rating system” means one of the following:

   (1) LEED-CI;
   (2) LEED-CS;
   (3) LEED-EB;
   (4) LEED-H; or
   (5) LEED-NC.

W. “LEED registration” means the notification to the U.S. green building council that a project is pursuing LEED certification.

X. “New sustainable building tax credit” for the purposes of 3.3.35 NMAC means the personal income tax credit the state of New Mexico issues to an applicant for a sustainable commercial building.

Y. “Person” does not include state, local government, public school districts or tribal agencies.

Z. “Qualified occupied square footage” means the occupied spaces of the building as determined by the U.S. green building council for those buildings obtaining LEED certification or the administrators of the build green New Mexico rating system for those homes obtaining build green New Mexico certification; or the U.S. environmental protection agency for energy star-certified manufactured homes.

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

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

CC. “Sustainable commercial building” means:

   (1) a multifamily dwelling unit, as registered and certified under the LEED-H or build green New Mexico rating system, that is certified by the U.S. green building council as LEED-H silver or higher or by build green New Mexico as silver or higher and has achieved a home energy rating system index of 60 or lower as developed by the residential energy services network; or
   
   (2) a building that has been registered and certified under the LEED-NC, LEED-EB, LEEDCS or LEED-CI rating system and that:

      (a) is certified by the U.S. green building council at LEED silver or higher;
      (b) achieves any prerequisite for and at least one point related to commissioning under LEED “energy and atmosphere”, if included in the applicable rating system; and
      
      (c) has reduced energy consumption beginning January 1, 2012, by sixty percent based on the national average for that building type as published by the U.S. department of energy as substantiated by the U.S. environmental protection agency target finder energy performance results form, dated no sooner than the schematic design phase of development.

DD. “Target finder” means the web-based program developed by the U.S. environmental protection agency to establish an energy goal in kilo British thermal units per square foot per year for predetermined building types.

EE. “Taxable year” means the calendar year or fiscal year upon the basis of which the net income is computed under the Income Tax Act, 7-2-2 et seq. NMSA 1978.

FF. “Taxpayer” means any individual subject to the tax imposed by the Income Tax Act, 7-2-1 et seq. NMSA 1978.
GG. “Taxpayer identification number” means the taxpayer’s nine digit social security number.

HH. “Tribal” means of, belonging to or created by a federally recognized Indian nation, tribe or pueblo.

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

3.3.35.8 - GENERAL PROVISIONS

A. A person who is the owner of a building in New Mexico that has been constructed or renovated to be a sustainable commercial building and that receives certification on or after the effective date of the adoption of 3.4.22 NMAC may receive a certificate of eligibility for a new sustainable building tax credit.

B. The total amount in a calendar year of the new sustainable building tax credit available pursuant to the Income Tax Act and the Corporate Income and Franchise Tax Act to taxpayers owning sustainable commercial buildings is limited to $1,250,000. When the $1,250,000 limit for sustainable commercial buildings is reached, based on all certificates of eligibility the department has issued, the department shall:

   (1) if part of the eligible new sustainable building tax credit is within the annual cap and part is over the annual cap, issue a certificate of eligibility for the amount under the annual cap for the applicable tax year and issue a certificate of eligibility for the balance for the subsequent tax year; or

   (2) if no new sustainable building tax credit funds are available, issue a certificate of eligibility for the next subsequent tax year in which funds are available, except for the last taxable year when the new sustainable building tax credit is in effect.

C. The department may issue certificates of eligibility to applicants who meet the requirements for the new sustainable commercial buildings tax credit in a taxable year when applications for the new sustainable commercial buildings tax credits exceed the annual cap and applications for the new sustainable residential building or manufactured housing tax credits are under the annual cap for that type of sustainable building by March 1 of any year in which the tax credit is in effect.

D. In the event of a discrepancy between a requirement of 3.3.35 NMAC and an existing New Mexico taxation and revenue department rule promulgated before 3.3.35 NMAC’s adoption, the existing rule governs.

E. All notices and application required to be submitted to the department under 3.3.35 NMAC shall be submitted to the energy conservation and management division of the department.

3.3.35.9 - VERIFIER’S ELIGIBILITY

A. The department reviews the qualification for verifiers of the build green New Mexico or LEED certifications, which shall be provided annually to the department, based on the following criteria:

   (1) the verifier is independent from the builder or 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. The department notifies the verifier of the reasons for disapproving or rescinding eligibility.

(1) The department shall notify the verifier of the proposed rescission in writing. The verifier has the right to request in writing review of the decision to rescind the verifier’s approval. The verifier shall file a request for review within 20 calendar days after the department’s notice is sent. The verifier shall address the request to the division director and include the reasons that the department should not rescind the verifier’s approval. The division director shall consider the request. The division director may hold a hearing and appoint a hearing officer to conduct the hearing. The division director shall send a final decision to the verifier within 20 calendar days after receiving the request or the date the hearing is held.

(2) The verifier may appeal in writing to the department’s secretary a division director’s decision. The notice of appeal shall include the reasons that the secretory 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.

[3.3.35.9 NMAC - N, 12/30/15]

3.3.35.10 - APPLICATION FOR THE NEW SUSTAINABLE BUILDING TAX CREDIT

A. In order to receive a certificate of eligibility for the tax credit, the applicant must submit an application for the new sustainable building tax credit after the building is completed, the applicant has fulfilled all other requirements and the total annual cap for the new sustainable building tax credit has not been met. An applicant may obtain an application form from the department.

B. An application package shall include a completed application form and attachments as specified on the form. The applicant shall submit the application form and required attachments at the same time. An applicant shall submit one application form for each sustainable commercial building. The applicant shall submit all material in the application package on 8½ inch by 11 inch paper. If the applicant fails to submit the application form and required attachments at the same time on 8½ inch by 11 inch paper the department may consider the application incomplete.

C. An applicant shall submit a complete application package to the department no later

3.3 NMAC
than March 1 of the taxable year for which the applicant seeks the new sustainable building tax credit. If an applicant does not submit a complete application package by March 1, any remaining new sustainable commercial building tax credit funds under the cap may be used in that taxable year for completed new sustainable residential 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 address of the sustainable commercial building, including the property’s legal description;
   (3) whether the applicant was the building owner at time of certification or a subsequent purchaser;
   (4) the rating system under which the sustainable commercial building was certified;
   (5) the certification level achieved;
   (6) for sustainable commercial buildings that are not multifamily dwelling units, the kilo British thermal units per square foot per year anticipated as demonstrated in the energy model submitted for LEED certification, broken out by all energy sources and including the percent of use for each energy source;
   (7) 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;
   (8) the qualified occupied square footage of the sustainable commercial building;
   (9) the date of certification;
   (10) for multifamily dwelling units, the HERS index; and
   (11) a statement signed and dated by the applicant or an authorized representative of the applicant, which may be a form of electronic signature if approved by the department, asserting that:
      (a) all information provided in the application package is true and correct to the best of the applicant’s knowledge under penalty of perjury;
      (b) all inputs for the energy reduction requirements are the same as the inputs for the energy model;
      (c) if an onsite solar system is used to meet the requirements of either the certification level applied for in the new sustainable building tax credit or the energy reduction requirement achieved, the applicant has not applied for and will not apply for a solar market development tax credit;
      (d) applicant understands that there are annual caps in place for the new sustainable building tax credit;
      (e) applicant understands that the department must verify the documentation submitted in the application package before the department issues a certificate of eligibility for a new sustainable building tax credit; and
      (f) applicant understands that the department issues a certificate of eligibility for the tax year in which the new sustainable commercial building was certified or if the new sustainable building tax credit’s annual cap has been reached for the next tax year in which funds are available.

E. In addition to the application form, the application package shall consist of the
following information provided as attachments:

(1) a copy of a current warranty deed, property tax bill or ground lease in the applicant’s name as of or after the date of certification for the address or legal description of the sustainable commercial building;

(2) a copy of the rating system certification form;

(3) a copy of the final LEED project info or project summary that shows the building’s square footage;

(4) a copy of the final certification review LEED checklist that shows the LEED credits achieved or the build green New Mexico final certification review checklist;

(5) for sustainable commercial buildings that are not multifamily dwelling units, a copy of the final LEED optimize energy performance template or templates, signed by a New Mexico licensed design professional, that the applicant submitted for LEED certification including the results of the energy model that shows the kilo British thermal units per square foot per year for the sustainable commercial building;

(6) for sustainable commercial building 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 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 RESNET lists as eligible for certification of the federal tax credit, showing the HERS index achieved, if applicable; and

(9) other information the department needs to review the building project for the new sustainable building tax credit.

[3.3.35.10 NMAC - N, 12/30/15]

3.3.35.11 - APPLICATION REVIEW PROCESS

A. The department considers applications in the order received, according to the day they are received, but not the time of day.

B. The department approves or disapproves an application package following the receipt of the complete application package.

C. The department reviews the application package to calculate the maximum new sustainable building tax credit, check accuracy of the applicant’s documentation and determine whether the department issues a certificate of eligibility for the new sustainable building tax credit.

D. If an onsite solar system is used to meet the requirements of either the certification level applied for in the new sustainable building tax credit or the energy reduction requirement achieved, the department verifies that no person has applied for a solar market development tax credit for that solar system. If the department finds that a solar market development tax credit has been approved for that solar system, the department shall disapprove the application for the new sustainable building tax credit. The applicant may submit a revised application package to the department that excludes electricity projected to be generated by the solar system. The department places the resubmitted application in the review schedule as if it were a new application.

E. If the department finds that the application package meets the requirements and funds for a new sustainable building tax credit are available, the department issues the certificate of 3.3 NMAC
eligibility for a new sustainable building tax credit. If funds for a new sustainable building tax credit are partially available or not available, the department issues a certificate of eligibility for any amount that is available and a certificate of eligibility for the balance for the next taxable year in which funds are available, until the last taxable year when the new sustainable building tax credit is in effect. The department provides approval through written notification to the applicant upon the application’s completed review. The notification shall include the taxpayer’s contact information, taxpayer identification number, certificate of eligibility number or numbers, the rating system certification level awarded to the building, the amount of qualified occupied square footage in the building, the new sustainable building tax credit amount or amounts and the new sustainable building tax credit’s taxable year or years.

F. The department shall disapprove an application that is not complete or correct. The department’s disapproval letter shall state the reasons why the department disapproved the application. The applicant may resubmit the application package for the disapproved project. The department places the resubmitted application in the review schedule as if it were a new application.

[3.3.35.11 NMAC - N, 12/30/15]

3.3.35.12 - VERIFICATION OF THE ALTERNATIVE METHOD USED FOR THE ENERGY REDUCTION REQUIREMENT

A. In the event the sustainable commercial building is a building type that is not available in target finder and the applicant uses an alternative method for the energy reduction requirement, the department reviews the submitted documentation. The following information shall be included:

(1) a narrative describing the methodology used;
(2) the kilo British thermal units per square foot per year for all buildings, real or modeled, used as a basis of comparison, broken out by all energy sources and including the percent of use for each energy source; and
(3) all formulas, assumptions and other explanation necessary to clarify how the kilo British thermal units per square foot per year for this project was derived.

B. The department uses the following criteria to evaluate the alternative method:

(1) clarity and completeness of the description of the alternative method;
(2) reasonableness of assumptions and comparisons; and
(3) thoroughness of justification of the method.

C. If the department rejects an alternative method it notifies the applicant of the reasons for the rejection.

D. The applicant may request that the department obtain the advice of a volunteer review committee of three or more New Mexico registered architects and New Mexico licensed professional mechanical and electrical engineers, chosen by the department, 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.

[3.3.35.12 NMAC - N, 12/30/15]

3.3.35.13 - CALCULATING THE TAX CREDIT

A. The department calculates the maximum new sustainable building tax credit for sustainable commercial buildings that are not multifamily dwelling units based on the qualified occupied square footage of the sustainable commercial building, the LEED rating system under 3.3 NMAC
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:

<table>
<thead>
<tr>
<th>LEED-NC silver:</th>
<th></th>
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<tbody>
<tr>
<td>first 10,000 square feet</td>
<td>equals the qualified square footage less than or equal to 10,000 multiplied by $3.50; plus</td>
</tr>
<tr>
<td>next 40,000 square feet</td>
<td>the qualified square footage greater than 10,000 and less than or equal to 50,000 multiplied by $1.75; plus</td>
</tr>
<tr>
<td>next 450,000 square feet</td>
<td>the qualified square footage greater than 50,000 and less than or equal to 500,000 multiplied by $.70</td>
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</table>

<table>
<thead>
<tr>
<th>LEED-NC gold:</th>
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<tbody>
<tr>
<td>first 10,000 square feet</td>
<td>equals the qualified square footage less than or equal to 10,000 multiplied by $4.75; plus</td>
</tr>
<tr>
<td>next 40,000 square feet</td>
<td>the qualified square footage greater than 10,000 and less than or equal to 50,000 multiplied by $2.00; plus</td>
</tr>
<tr>
<td>next 450,000 square feet</td>
<td>the qualified square footage greater than 50,000 and less than or equal to 500,000 multiplied by $1.00</td>
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<thead>
<tr>
<th>LEED-NC platinum:</th>
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</tr>
</thead>
<tbody>
<tr>
<td>first 10,000 square feet</td>
<td>equals the qualified square footage less than or equal to 10,000 multiplied by $6.25; plus</td>
</tr>
<tr>
<td>next 40,000 square feet</td>
<td>the qualified square footage greater than 10,000 and less than or equal to 50,000 multiplied by $3.25; plus</td>
</tr>
<tr>
<td>next 450,000 square feet</td>
<td>the qualified square footage greater than 50,000 and less than or equal to 500,000 multiplied by $2.00</td>
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<table>
<thead>
<tr>
<th>LEED-EB OR LEED-CS silver:</th>
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<tbody>
<tr>
<td>first 10,000 square feet</td>
<td>equals the qualified square footage less than or equal to 10,000 multiplied by $2.50; plus</td>
</tr>
<tr>
<td>next 40,000 square feet</td>
<td>the qualified square footage greater than 10,000 and less than or equal to 50,000 multiplied by $1.25; plus</td>
</tr>
<tr>
<td>next 450,000 square feet</td>
<td>the qualified square footage greater than 50,000 and less than or equal to 500,000 multiplied by $.50</td>
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<thead>
<tr>
<th>LEED-EB OR LEED-CS gold:</th>
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<tbody>
<tr>
<td>first 10,000 square feet</td>
<td>equals the qualified square footage less than or equal to 10,000 multiplied by $3.35; plus</td>
</tr>
<tr>
<td>next 40,000 square feet</td>
<td>the qualified square footage greater than 10,000 and less than or equal to 50,000 multiplied by $1.40; plus</td>
</tr>
<tr>
<td>next 450,000 square feet</td>
<td>the qualified square footage greater than 50,000 and less than or equal to 500,000 multiplied by $.70</td>
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</tbody>
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<table>
<thead>
<tr>
<th>LEED-EB OR LEED-CS platinum:</th>
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<tbody>
<tr>
<td>first 10,000 square feet</td>
<td>equals the qualified square footage less than or equal to 10,000 multiplied by $4.40; plus</td>
</tr>
<tr>
<td>next 40,000 square feet</td>
<td>the qualified square footage greater than 10,000 and less than or equal to 50,000 multiplied by $2.30; plus</td>
</tr>
<tr>
<td>next 450,000 square feet</td>
<td>the qualified square footage greater than 50,000 and less than or equal to 500,000 multiplied by $1.40</td>
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<thead>
<tr>
<th>LEED-CI silver:</th>
<th></th>
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<tbody>
<tr>
<td>first 10,000 square feet</td>
<td>equals the qualified square footage less than or equal to</td>
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</table>
10,000 multiplied by $1.40; plus
next 40,000 square feet the qualified square footage greater than 10,000 and less than or equal to 50,000 multiplied by $.70; plus
next 450,000 square feet the qualified square footage greater than 50,000 and less than or equal to 500,000 multiplied by $.30

LEED-CI gold:
first 10,000 square feet equals the qualified square footage less than or equal to 10,000 multiplied by $1.90; plus
next 40,000 square feet the qualified square footage greater than 10,000 and less than or equal to 50,000 multiplied by $.80; plus
next 450,000 square feet the qualified square footage greater than 50,000 and less than or equal to 500,000 multiplied by $.40

LEED-CI platinum:
first 10,000 square feet equals the qualified square footage less than or equal to 10,000 multiplied by $2.50; plus
next 40,000 square feet the qualified square footage greater than 10,000 and less than or equal to 50,000 multiplied by $1.30; plus
next 450,000 square feet the qualified square footage greater than 50,000 and less than or equal to 500,000 multiplied by $.80

B. The department calculates the maximum new sustainable building tax credit for multifamily dwelling units based on the qualified occupied square footage of the sustainable building, the rating system under which the applicant achieved certification and the certification level the applicant achieved. The tax credit for various square footages is specified in the chart below:

<table>
<thead>
<tr>
<th>LEED-H silver or build green New Mexico silver:</th>
<th>up to 2,000 square feet</th>
<th>equals the qualified square footage less than or equal to 2,000 multiplied by $3.00</th>
</tr>
</thead>
<tbody>
<tr>
<td>LEED-H gold or build green New Mexico gold:</td>
<td>up to 2,000 square feet</td>
<td>equals the qualified square footage less than or equal to 2,000 multiplied by $4.50</td>
</tr>
<tr>
<td>LEED-H platinum or build green New Mexico emerald:</td>
<td>up to 2,000 square feet</td>
<td>equals the qualified square footage less than or equal to 2,000 multiplied by $6.50</td>
</tr>
</tbody>
</table>

C. The taxation and revenue department makes the final determination of the amount of the new sustainable building tax credit.
[3.3.35.13 NMAC - N, 12/30/15]

3.3.35.14 - CLAIMING THE STATE TAX CREDIT
To claim the new sustainable building tax credit for a given year, an applicant shall submit all certificates of eligibility to the taxation and revenue department prior to the end of that calendar year, along with a completed form provided by the taxation and revenue department, and any other information the taxation and revenue department requires.
[3.3.35.14 NMAC - N, 12/30/15]
7-2-18.30.-- FOSTER YOUTH EMPLOYMENT INCOME TAX CREDIT.--

A. A taxpayer who is not a dependent of another individual and who employs a qualified foster youth in New Mexico is eligible for a credit against the taxpayer's tax liability imposed pursuant to the Income Tax Act in an amount up to one thousand dollars ($1,000) of the gross wages paid to each qualified foster youth by the taxpayer during the taxable year for which the return is filed. A taxpayer who employs a qualified foster youth for less than the full taxable year is eligible for a credit amount equal to one thousand dollars ($1,000) multiplied by the fraction of a full year for which the qualified foster youth was employed. The tax credit provided by this section may be referred to as the "foster youth employment income tax credit".

B. The purpose of the foster youth employment income tax credit is to encourage the employment of individuals who as youth were adjudicated as abused or neglected or who were in the legal custody of the children, youth and families department under the Children's Code or in the legal custody of a New Mexico Indian nation, tribe or pueblo or the United States department of the interior bureau of Indian affairs division of human services.

C. A taxpayer may claim the foster youth employment income tax credit provided in this section for each taxable year in which the taxpayer employs one or more qualified foster youths; provided that the taxpayer may not claim the foster youth employment income tax credit for any individual qualified foster youth for more than one calendar year from the date of hire.

D. That portion of a foster youth employment income tax credit approved by the department that exceeds a taxpayer's income tax liability in the taxable year in which the foster youth employment income tax credit is claimed shall not be refunded to the taxpayer but may be carried forward for up to three years. The foster youth employment income tax credit shall not be transferred to another taxpayer.

E. 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 foster youth employment income tax credit that would have been claimed on a joint return.

F. A taxpayer may be allocated the right to claim a foster youth employment 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 Subsection A of this section.

G. The taxpayer shall submit to the department with respect to each employee for whom the foster youth employment income tax credit is claimed information required by the department with respect to the qualified foster youth's employment by the taxpayer during the taxable year for which the foster youth employment income tax credit is claimed, including information establishing that the employee is a qualified foster youth that can be used to determine that the employee was not also employed in the same taxable year.
by another taxpayer claiming a foster youth employment income or corporate income tax credit for that employee pursuant to this section or the Corporate Income and Franchise Tax Act.

H. The department shall:
    (1) adopt rules establishing procedures to certify that an employee is a qualified foster youth for purposes of obtaining a foster youth employment income tax credit. The rules shall ensure that not more than one foster youth employment income tax credit per qualified foster youth shall be allowed in a taxable year and that the credits allowed per qualified foster youth are limited to a maximum of one year's employment; and
    (2) collaborate with the children, youth and families department, the New Mexico Indian nations, tribes and pueblos and the United States department of the interior bureau of Indian affairs division of human services to establish the certification procedures.

I. 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.

J. The department shall compile an annual report on the foster youth employment income tax credit that shall include the number of taxpayers approved by the department to receive the credit, the aggregate amount of credits approved and any other information necessary to evaluate the effectiveness of the credit. The department shall present the annual report to the revenue stabilization and tax policy committee and the legislative finance committee with an analysis of the effectiveness and cost of the tax credit and whether the tax credit is performing the purpose for which it was created.

K. As used in this section, "qualified foster youth" means an individual:
    (1) who:
        (a) is currently in the legal custody of the children, youth and families department pursuant to the Children's Code or in the legal custody of a New Mexico Indian nation, tribe or pueblo or the United States department of the interior bureau of Indian affairs division of human services; or
        (b) within the seven years prior to the taxable year for which the tax credit is claimed, was aged fourteen years or older and was in the legal custody of the children, youth and families department pursuant to the Children's Code or in the legal custody of a New Mexico Indian nation, tribe or pueblo or the United States department of the interior bureau of Indian affairs division of human services;
    (2) who works at least twenty hours per week during the taxable year for which the foster youth employment income tax credit is claimed; and
    (3) who was not previously employed by the taxpayer prior to the taxable year for which the foster youth employment income tax credit is claimed.

(Laws 2018, Chapter 36, Section 1; Applicable to taxable years beginning on or after January 1, 2018)
7-2-18.31. NEW SOLAR MARKET DEVELOPMENT INCOME TAX CREDIT.--

A. For taxable years 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, may apply for, 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. 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. The aggregate amount of credits that may be certified as eligible in any calendar year is twelve million dollars ($12,000,000). 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. 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.

F. 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 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. The
application shall include a certification made pursuant to Subsection E of
this section.

G. 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.

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 new solar market development income tax credit that would have been
claimed on a joint return.

I. 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.

J. 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.

K. The taxation and revenue department shall compile an annual
report on the new solar market development income tax credit that shall
include the number of taxpayers approved by the department to receive the
credit, the aggregate amount of credits approved and any other information
necessary to evaluate the credit. The department shall present the report to
the revenue stabilization and tax policy committee and the legislative finance
committee with an analysis of the cost of the tax credit.

L. 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 2020, Chapter 13, Section 8 – Applies to purchase and installation of a
solar thermal system or a photovoltaic system in taxable years beginning on or
after January 1, 2022.)

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 tax credit". For taxable years prior to January 1,
2028, a taxpayer who is a building owner and files an income tax return is
eligible to be granted a 2021 sustainable building tax credit by the department

3.3 NMAC
if the requirements of this section are met. The 2021 sustainable building tax credit shall be available for the construction in New Mexico of a sustainable building, the renovation of an existing building in New Mexico, 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 tax credit provided in the Corporate Income and Franchise Tax Act or the 2015 sustainable building tax credit pursuant to the Income Tax Act or the Corporate Income and Franchise Tax Act has been claimed.

B. The amount of a 2021 sustainable building 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:

<table>
<thead>
<tr>
<th>Rating Level</th>
<th>Qualified Occupied Square Footage</th>
<th>Tax Credit per Square Foot</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>LEED-NC Platinum</strong></td>
<td>First 10,000</td>
<td>$5.25</td>
</tr>
<tr>
<td></td>
<td>Next 40,000</td>
<td>$2.25</td>
</tr>
<tr>
<td></td>
<td>Over 50,000</td>
<td>$1.00</td>
</tr>
<tr>
<td></td>
<td>up to 200,000</td>
<td>$1.00</td>
</tr>
<tr>
<td><strong>LEED-EB or CS Platinum</strong></td>
<td>First 10,000</td>
<td>$3.40</td>
</tr>
<tr>
<td></td>
<td>Next 40,000</td>
<td>$1.30</td>
</tr>
<tr>
<td></td>
<td>Over 50,000</td>
<td>$0.35</td>
</tr>
<tr>
<td></td>
<td>up to 200,000</td>
<td>$0.35</td>
</tr>
<tr>
<td><strong>LEED-CI Platinum</strong></td>
<td>First 10,000</td>
<td>$1.50</td>
</tr>
<tr>
<td></td>
<td>Next 40,000</td>
<td>$0.40</td>
</tr>
<tr>
<td></td>
<td>Over 50,000</td>
<td>$0.30</td>
</tr>
<tr>
<td></td>
<td>up to 200,000</td>
<td>$0.30</td>
</tr>
<tr>
<td><strong>LEED-NC Gold</strong></td>
<td>First 10,000</td>
<td>$3.00</td>
</tr>
<tr>
<td></td>
<td>Next 40,000</td>
<td>$1.00</td>
</tr>
<tr>
<td></td>
<td>Over 50,000</td>
<td>$0.25</td>
</tr>
<tr>
<td></td>
<td>up to 200,000</td>
<td>$0.25</td>
</tr>
<tr>
<td><strong>LEED-EB or -CS Gold</strong></td>
<td>First 10,000</td>
<td>$2.00</td>
</tr>
<tr>
<td></td>
<td>Next 40,000</td>
<td>$1.00</td>
</tr>
<tr>
<td></td>
<td>Over 50,000</td>
<td>$0.25</td>
</tr>
<tr>
<td></td>
<td>up to 200,000</td>
<td>$0.25</td>
</tr>
<tr>
<td><strong>LEED-CI Gold</strong></td>
<td>First 10,000</td>
<td>$0.90</td>
</tr>
<tr>
<td></td>
<td>Next 40,000</td>
<td>$0.40</td>
</tr>
<tr>
<td></td>
<td>Over 50,000</td>
<td>$0.10; and</td>
</tr>
<tr>
<td></td>
<td>up to 200,000</td>
<td>$0.10; and</td>
</tr>
</tbody>
</table>

(b) with additional amounts based on the additional criteria and the amount of qualified occupied square footage, as indicated in
the following chart:

<table>
<thead>
<tr>
<th>Additional Criteria</th>
<th>Qualified Occupied Square Footage</th>
<th>Tax Credit per Square Foot</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fully Electric Building</td>
<td>First 50,000</td>
<td>$1.00</td>
</tr>
<tr>
<td></td>
<td>Over 50,000 up to 200,000</td>
<td>$0.50</td>
</tr>
<tr>
<td>Zero Carbon, Energy, Waste or Water Certified</td>
<td>First 50,000</td>
<td>$0.25</td>
</tr>
<tr>
<td></td>
<td>Over 50,000 up to 200,000</td>
<td>$0.10;</td>
</tr>
</tbody>
</table>

(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 air-conditioning 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:

<table>
<thead>
<tr>
<th>Product</th>
<th>Affordable Housing</th>
<th>Non-Affordable Housing</th>
</tr>
</thead>
<tbody>
<tr>
<td>Energy Star Air Source Heat Pump</td>
<td>$2,000</td>
<td>$1,000</td>
</tr>
<tr>
<td>Energy Star Ground Source Heat Pump</td>
<td>$2,000</td>
<td>$1,000</td>
</tr>
<tr>
<td>Energy Star Windows and Doors</td>
<td>100% of product cost up to $1,000</td>
<td>50% of product cost up to $500</td>
</tr>
<tr>
<td>Insulation Improvements That Meet Rules of the Energy, Minerals and Natural Resources Department</td>
<td>100% of product cost up to $2,000</td>
<td>50% of product cost up to $1,000</td>
</tr>
<tr>
<td>Energy Star Heat Pump Water Heater</td>
<td>$700</td>
<td>$350</td>
</tr>
</tbody>
</table>
Electric Vehicle Ready 100% of product 50% of product
cost up to cost up to
$3,000 $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:

<table>
<thead>
<tr>
<th>Rating Level</th>
<th>Qualified Occupied Square Footage</th>
<th>Tax Credit per Square Foot</th>
</tr>
</thead>
<tbody>
<tr>
<td>LEED-H Platinum</td>
<td>Up to 2,000</td>
<td>$5.50</td>
</tr>
<tr>
<td>LEED-H Gold</td>
<td>Up to 2,000</td>
<td>$3.80</td>
</tr>
<tr>
<td>Build Green Emerald</td>
<td>Up to 2,000</td>
<td>$5.50</td>
</tr>
<tr>
<td>Build Green Gold</td>
<td>Up to 2,000</td>
<td>$3.80</td>
</tr>
<tr>
<td>Manufactured Housing</td>
<td>Up to 2,000</td>
<td>$2.00; and</td>
</tr>
</tbody>
</table>
(b) with additional amounts based on the additional criteria and the amount of qualified occupied square footage, as indicated in the following chart:

<table>
<thead>
<tr>
<th>Additional Criteria</th>
<th>Qualified Occupied Square Footage</th>
<th>Tax Credit per Square Foot</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fully Electric Building</td>
<td>Up to 2,000</td>
<td>$1.00</td>
</tr>
<tr>
<td>Zero Carbon, Energy, Waste or Water Certified</td>
<td>Up to 2,000</td>
<td>$0.25; and</td>
</tr>
</tbody>
</table>
(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:

<table>
<thead>
<tr>
<th>Product</th>
<th>Amount of Credit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Affordable Low-Income Energy Star Air Source Heat Pump</td>
<td>$2,000</td>
</tr>
<tr>
<td>Non-Affordable Non-Low Income Energy Star Ground Source Heat Pump</td>
<td>$2,000</td>
</tr>
<tr>
<td>Energy Star Windows and Doors</td>
<td>100% of product cost up to $1,000</td>
</tr>
</tbody>
</table>

Insulation Improvements That Meet Rules of the Energy, Minerals and Natural Resources Department 100% of product 50% of product
C. A person who is a building owner may apply for a certificate of eligibility for the 2021 sustainable building tax credit from the energy, minerals and natural resources department after the construction, installation or renovation of the sustainable building or installation of energy-conserving products in an existing building is complete. Applications shall be considered in the order received. If the energy, minerals and natural resources department determines that the building owner meets the requirements of this subsection and that the building with respect to which the application is made meets the requirements of this section for a 2021 sustainable building tax credit, the energy, minerals and natural resources department may issue a 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 maximum amount of 2021 sustainable building tax credit for which the building owner would be 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. If the certification level for the sustainable residential building is awarded on or after January 1, 2022, 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 total amount of 2021 sustainable building tax credits represented by certificates of eligibility issued by the energy, minerals and natural resources department pursuant to this section and pursuant to the Corporate Income and Franchise Tax Act 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.

F. Installation of a solar thermal system or a photovoltaic system eligible for the new solar market development tax credit pursuant to Section 7-2-18.31 NMSA 1978 shall not be used as a component of qualification for the rating system certification level used in determining eligibility for the 2021 sustainable building tax credit, unless a new solar market development tax credit pursuant to Section 7-2-18.31 NMSA 1978 has not been claimed with respect to that system and the building owner and the taxpayer claiming the 2021 sustainable building tax credit certify that such a tax credit will not be claimed with respect to that system.

G. To claim the 2021 sustainable building tax credit, the building owner shall provide to the taxation and revenue department a certificate of eligibility issued by the energy, minerals and natural resources department pursuant to the requirements of Subsection C of this section and any other information the taxation and revenue department may require.

H. If the approved amount of a 2021 sustainable building tax credit for a taxpayer in a taxable year represented by a document issued pursuant to Subsection C of this section is:

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

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

I. If the sum of all 2021 sustainable building tax credits that can be applied to a taxable year for a taxpayer, calculated according to Paragraph (1) or (2) of Subsection H of this section, exceeds the taxpayer's income tax liability for that taxable year, the excess may be carried forward for a period of up to seven years; provided that if the taxpayer is a low-income taxpayer, the excess
shall be refunded to the taxpayer.

J. A taxpayer who otherwise qualifies and claims a 2021 sustainable building tax credit with respect to a sustainable building owned by a partnership or other business association of which the taxpayer is a member may claim a credit only in proportion to that taxpayer's interest in the partnership or association. The total credit claimed in the aggregate by all members of the partnership or association with respect to the sustainable building shall not exceed the amount of the credit that could have been claimed by a sole owner of the property.

K. 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 tax credit that would have been allowed on a joint return.

L. If the requirements of this section have been complied with, the department shall issue to the building owner a document granting a 2021 sustainable building tax credit. The document shall be numbered for identification and declare its date of issuance and the amount of the tax credit allowed pursuant to this section. The document may be submitted by the building owner with that taxpayer's income tax return, if applicable, or may be sold, exchanged or otherwise transferred to another taxpayer. The parties to such a transaction shall notify the department of the sale, exchange or transfer within ten days of the sale, exchange or transfer.

M. The department and the energy, minerals and natural resources department shall compile an annual report on the 2021 sustainable building tax credit created pursuant to this section that shall include the number of taxpayers approved to receive the tax credit, the aggregate amount of tax credits approved and any other information necessary to evaluate the effectiveness of the tax credit. 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 tax credit.

N. 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) "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-
hundred-eight-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;

(5) "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;

(6) "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;

(7) "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;

(8) "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;

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

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

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

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

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

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

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

(16) "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;

(17) "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;

(18) "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;

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

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

(21) "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;

(22) "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 gold or LEED-H; and
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;

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

(24) "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;

(25) "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;

(26) "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;

(27) "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

(28) "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 2022, Chapter 47, Section 9)
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:

<table>
<thead>
<tr>
<th>Adjusted gross income is</th>
<th>Amount of credit per qualifying child is</th>
</tr>
</thead>
<tbody>
<tr>
<td>Over $0</td>
<td>But not over $25,000</td>
</tr>
<tr>
<td>25,000</td>
<td>50,000</td>
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<td>350,000</td>
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</tr>
</tbody>
</table>

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)
7-2-20. 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. FINDING.—The legislature finds that it is in the public interest to provide additional wildlife funds to perpetuate the renewable wildlife resource of New Mexico that gives so much pleasure and recreation to all New Mexicans. This act provides a means by which additional wildlife funds may be provided from a voluntary check-off designation of tax refunds due the taxpayer on the state income tax form. It is the intent of the legislature that this program of income tax refund check-off is supplemental to any other funding and is in no way intended to take the place of the funding that would otherwise be appropriated for this purpose.
(Laws 1981, Chapter 343, Section 1)

7-2-24. OPTIONAL DESIGNATION OF TAX REFUND CONTRIBUTION.—
A. Except as otherwise provided in Subsection C of this section, any 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 him to be paid into the game protection fund. In the case of a joint return, both individuals must make such designation.

B. The department shall revise the state income tax form to allow the designation of such contributions in substantially the following form:

"New Mexico Game Protection Fund—Check [ ]
if you wish to contribute a part or all of your tax refund to the Game Protection Fund. Enter here $___________the amount of your contribution.".

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.
(Laws 1987, Chapter 277, Section 4)

7-2-24.1. OPTIONAL DESIGNATION OF TAX REFUND CONTRIBUTION FOR TREE PLANTINGS.—
   A. Except as otherwise provided in Subsection C of this section, any 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 him to be paid into the conservation planting revolving fund. In the case of a joint return, both individuals must make such designation.
   B. The state shall revise the state income tax form to allow the designation of such contributions in substantially the following form:

   "Conservation Planting Revolving Fund—Check [ ] if you wish to contribute a part or all of your tax refund to the Conservation Planting Revolving Fund to pay for the planting of trees in New Mexico. Enter here $__________ the amount of your contribution."

   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.
(Laws 1992, Chapter 108, Section 4)

7-2-24.2. OPTIONAL DESIGNATION OF TAX REFUND CONTRIBUTION—HEALTHY SOIL PROGRAM.—
   A. An individual whose state income tax liability after application of allowable credits and tax rebates in a year is lower than the amount of money held by the department to the credit of such individual for that tax year may designate a portion of the income tax refund due to the individual to be paid to the board of regents of New Mexico state university for support of the healthy soil program in the New Mexico department of agriculture. In the case of a joint return, both individuals must make such a designation.
   B. The department shall revise the state income tax form to allow the designation of such contributions in the following form:

   "Healthy Soil Program - Check [ ] if you wish to contribute a part or all of your tax refund for the support of the healthy soil program in the New Mexico department of agriculture. Enter here $__________ the amount of your contribution.".
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.

(Laws 2021, Chapter 90, Section 1)

*** REPEALED EFFECTIVE May 18, 2016
BY LAWS 2016, CHAPTER 7, SECTION 4 ***

7-2-27. LEGISLATIVE FINDINGS AND INTENT.--The legislature finds that it is in the public interest to provide additional funds to increase the size of the Santa Fe national cemetery to provide a lasting tribute to all veterans of New Mexico. This act provides a means by which additional funds may be provided from a voluntary check-off designation of tax refunds due the taxpayer on the state income tax form. It is the intent of the legislature that this program of income tax refund check-off is supplemental to any other funding and is in no way intended to take the place of the funding that would otherwise be appropriated for this purpose. It is further the intent of the legislature that all contributions obtained under this act will automatically be transferred into the veterans' national cemetery fund in the event the city of Santa Fe grants and conveys the additional acreage for the Santa Fe national cemetery.

(Laws 1987, Chapter 257, Section 2)

7-2-28. OPTIONAL DESIGNATION OF TAX REFUND CONTRIBUTION.--

A. Any individual whose state income tax liability 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 be paid into the veterans' state cemetery fund. In the case of a joint return, both individuals must make such designation.

B. The secretary shall revise the state income tax form to allow the designation by individual taxpayers of such contributions in substantially the following form:

"New Mexico Veterans' State Cemetery Fund--Check [ ] if you wish to contribute a part or all of your tax refund to the Veterans' State Cemetery Fund. Enter here $___________ the amount of your contribution."

C. The provisions of this section do not apply to refund amounts intercepted under the Tax Refund Intercept Program Act, and any designation under the provisions of this section with respect to such intercepted refunds is void.

(Laws 2016, Chapter 7, Section 2)

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 7-2-28 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 2016, Chapter 7, Section 3)

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7-2-29. FINDING.--The legislature finds that it is in the public interest to provide additional funds to ensure that substance abuse educational programs are provided in New Mexico schools. This act provides a means by which additional substance abuse education funds may be provided from a voluntary check-off designation of tax refunds due the taxpayer on the state income tax form. It is the intent of the legislature that this program of income tax refund check-off is supplemental to any other funding and is in no way intended to take the place of the funding that would otherwise be appropriated for this purpose.

(Laws 1987, Chapter 265, Section 1)
7-2-30. OPTIONAL DESIGNATION OF TAX REFUND CONTRIBUTION.--

A. Any individual whose state income tax liability in any year is lower than the amount of money held by the taxation and revenue department to the credit of such individual for that tax year may designate any portion of the income tax refund due him to be paid into the substance abuse education fund. In the case of a joint return, both individuals must make such designation.

B. The secretary of the department shall revise the state income tax form to allow the designation by individual taxpayers of such contributions in substantially the following form:

"New Mexico Substance Abuse Education Fund—Check [ ]
if you wish to contribute a part or all of your tax refund
to the Substance Abuse Education Fund. Enter here
$________ the amount of your contribution."

C. The provisions of this section do not apply to refund amounts intercepted under the tax refund intercept program and any designation under the provisions of this section with respect to such intercepted refunds is void.

(Laws 1987, Chapter 265, Section 2)

7-2-30.1. OPTIONAL DESIGNATION OF TAX REFUND CONTRIBUTION—AMYOTROPHIC LATERAL SCLEROSIS RESEARCH FUND.--

A. Except as otherwise provided in Subsection C of this section, any 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 amyotrophic lateral sclerosis research fund. In the case of a joint return, both individuals must make such a designation.

B. The department shall revise the state income tax form to allow the designation of such contributions in the following form:

"Amyotrophic Lateral Sclerosis Research Fund - Check [ ]
if you wish to contribute a part or all of your tax refund to the amyotrophic lateral sclerosis research fund for amyotrophic lateral sclerosis (Lou Gehrig's disease) research. Enter here $________ the amount of your contribution."

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.

(Laws 2005, Chapter 56, Section 2)
7-2-30.2. OPTIONAL DESIGNATION OF TAX REFUND CONTRIBUTION—ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT—STATE PARKS DIVISION.—

A. Except as otherwise provided in Subsection C of this section, an individual whose state income tax liability after application of allowable credits and tax rebates in a year is lower than the amount of money held by the department to the credit of such individual for that tax year may designate a portion of the income tax refund due to the individual to be paid to the state parks division of the energy, minerals and natural resources department for the kids in parks education program. In the case of a joint return, both individuals must make such designation.

B. The department shall revise the state income tax form to allow the designation of such contributions in the following form:

"State Parks Division — Check [ ] if you wish to contribute a part or all of your tax refund to the state parks division of the energy, minerals and natural resources department for the kids in parks education program. Enter here $____________ the amount of your contribution.".

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.

(Laws 2005, Chapter 87, Section 2)

7-2-30.3. OPTIONAL DESIGNATION OF TAX REFUND CONTRIBUTION—NATIONAL GUARD MEMBER AND FAMILY ASSISTANCE.—

A. Except as otherwise provided in Subsection C of this section, an individual whose state income tax liability after application of allowable credits and tax rebates in a year is lower than the amount of money held by the department to the credit of the individual for that tax year may designate a portion of the income tax refund due to the individual to be contributed for assistance to members of the New Mexico national guard and to their families. In the case of a joint return, both individuals must make such a designation.

B. The department shall revise the state income tax form to allow the designation of such contributions in the following form:

"National Guard Member and Family Assistance - Check [ ] if you wish to contribute a part or all of your tax refund for assistance to members of the New Mexico national guard and to their families. Enter here $________ the amount of your contribution.".

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.

(Laws 2018, Chapter 4, Section 2)
7-2-30.4. OPTIONAL DESIGNATION OF TAX REFUND CONTRIBUTION--VIETNAM VETERANS MEMORIAL.--

A. Except as otherwise provided in Subsection C of this section, any 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 taxation and revenue 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 veterans' services department for the operation, maintenance and improvement of the Vietnam veterans memorial near Angel Fire, New Mexico. In the case of a joint return, both individuals must make such a designation.

B. The department shall revise the state income tax form to allow the designation of such contributions in the following form:

"Vietnam Veterans Memorial - Check [ ]
if you wish to contribute a part or all of your tax refund to the veterans' services department for the operation, maintenance and improvement of the Vietnam Veterans Memorial near Angel Fire, New Mexico. Enter here $________ the amount of your contribution."

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.

(Laws 2017, Chapter 115, Section 2)
7-2-30.5. OPTIONAL DESIGNATION OF TAX REFUND CONTRIBUTION --VETERANS' ENTERPRISE FUND.--

A. Except as otherwise provided in Subsection C of this section, any 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 veterans' enterprise fund. In the case of a joint return, both individuals must make such a designation.

B. The department shall revise the state income tax form to allow the designation of such contributions in the following form:

"Veterans' Enterprise Fund - Check [ ] if you wish
to contribute a part or all of your tax refund to
the veterans' enterprise fund to carry out the
programs, duties or services of the veterans'
services department. Enter here $________ the
amount of your contribution."

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.

(Laws 2012, Chapter 7, Section 1)
OPTIONAL DESIGNATION OF TAX REFUND CONTRIBUTION--LOTTERY TUITION FUND.--

A. Except as otherwise provided in Subsection C of this section, any 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 lottery tuition fund. In the case of a joint return, both individuals must make such a designation.

B. The department shall revise the state income tax form to allow the designation of such contributions in the following form:

"Lottery Tuition Fund - Check [ ] if you wish to contribute a part or all of your tax refund to the lottery tuition fund to provide tuition assistance for New Mexico resident undergraduates. Enter here $________ the amount of your contribution.".

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.

(Laws 2012, Chapter 57, Section 1)

OPTIONAL DESIGNATION OF TAX REFUND CONTRIBUTION--EQUINE SHELTER RESCUE FUND.--

A. Any 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 equine shelter rescue fund. In the case of a joint return, both individuals must make such a designation.

B. The department shall revise the state income tax form to allow the designation of such contributions in the following form:

"Equine Shelter Rescue Fund - Check [ ] if you wish to contribute a part or all of your tax refund to the equine shelter rescue fund. Enter here $________ the amount of your contribution.".

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.

(Laws 2023, Chapter 45, Section 1)
7-2-30.8.--FINDING--OPTIONAL DESIGNATION OF TAX REFUND CONTRIBUTION--SENIOR SERVICES.--

A. The legislature finds that it is in the public interest to provide additional money to enhance or expand vital services to New Mexico's elderly population. This section provides a means by which individuals may donate all or a portion of their income tax refund, through a voluntary check-off designation, to provide supplemental funding through the non-metro area agency on aging to senior service providers throughout the state. It is the intent of the legislature that this program of income tax refund check-off is supplemental to any other funding and is in no way intended to take the place of the funding that would otherwise be appropriated for this purpose.

B. Except as otherwise provided in Subsection D of this section, an individual whose state income tax liability after application of allowable credits and tax rebates in a year is lower than the amount of money held by the department to the credit of such individual for that tax year may designate a portion of the income tax refund due to the individual to be paid to the aging and long-term services department for distribution statewide through the area agencies on aging for the provision of supplemental senior services throughout the state, 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. In the case of a joint return, both individuals must make the designation.

C. The department shall revise the state income tax form to allow the designation of such contributions in the following form:

“Supplemental Senior Services – Check [ ] if you wish to contribute a part or all of your tax refund to provide supplemental funding to enhance or expand senior services throughout the state. Enter here $_____________ the amount of your contribution.”.

D. 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.

E. The department shall distribute one hundred percent of the tax refund contributions pursuant to this section to the aging and long-term services department for distribution statewide through the area agencies on aging. The agencies on aging shall cooperatively establish a grant program based on need that is available to all senior service providers in the state that meet the requirements of the program. The agencies shall seek input from senior service providers in developing the grant program.

(Laws 2015, Chapter 50, Section 1; Applicable to taxable years beginning on or after January 1, 2015)
7-2-30.9.-- OPTIONAL DESIGNATION OF TAX REFUND CONTRIBUTION—ANIMAL CARE AND FACILITY FUND.--

A. 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 that individual for that tax year may designate a portion of the income tax refund due to the individual to be paid to the animal care and facility fund to carry out the statewide dog and cat spay and neuter program. In the case of a joint return, both individuals must make that designation.

B. The department shall revise the state income tax form to allow the designation of a contribution in the following form:

"Statewide Dog and Cat Spay and Neuter Program - Check [ ] if you wish to contribute a part or all of your tax refund to the Animal Care and Facility Fund to carry out the statewide dog and cat spay and neuter program. Enter here $_________ the amount of your contribution."

C. The provisions of this section do not apply to an income tax refund subject to interception under the provisions of the Tax Refund Intercept Program Act, and a designation made pursuant to the provisions of this section to that refund is void.

(Laws 2015, Chapter 82, Section 1; Applicable to taxable years beginning on or after January 1, 2015)
7-2-30.10.--OPTIONAL DESIGNATION OF TAX REFUND CONTRIBUTION—SEXUAL ASSAULT EXAMINATION KIT PROCESSING GRANT FUND--SEXUAL ASSAULT SERVICES.--

A. 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 that individual for that tax year may designate a portion of the income tax refund due to the individual to be paid to the sexual assault examination kit processing grant fund for the department of public safety to award grants to law enforcement agencies for the processing of sexual assault examination kits and to the department of health to fund sexual assault services provided by sexual assault service providers. In the case of a joint return, both individuals must make that designation.

B. The department shall revise the state income tax form to allow the designation of a contribution in the following form:

"Sexual Assault Examination Kit Processing Grant Fund and Sexual Assault Services - Check [ ] if you wish to contribute a part or all of your tax refund to the Sexual Assault Examination Kit Processing Grant Fund for the processing of sexual assault examination kits and to the Department of Health for the provision of sexual assault services by sexual assault service providers. Enter here $_________ the amount of your contribution."

C. Instructional materials shall provide that contributions to the sexual assault examination kit processing grant fund may be made directly to the department of public safety and contributions to fund sexual assault services by sexual assault service providers may be made directly to the department of health.

D. The provisions of this section do not apply to an income tax refund subject to interception under the provisions of the Tax Refund Intercept Program Act, and a designation made pursuant to the provisions of this section to that refund is void.

E. The department shall distribute the tax refund contributions pursuant to this section as follows:

(1) fifty percent to the state treasury for credit to the sexual assault examination kit processing grant fund for distribution by the department of public safety to law enforcement agencies pursuant to the sexual assault examination kit processing grant program; and 

(2) fifty percent to the department of health to fund sexual assault services provided by sexual assault service providers.

(Laws 2017, Chapter 116, Section 1)
7-2-30.11. -- OPTIONAL DESIGNATION OF TAX REFUND CONTRIBUTION- NEW MEXICO HOUSING TRUST FUND.--

A. Any 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 New Mexico housing trust fund. In the case of a joint return, both individuals must make such a designation.

B. The department shall revise the state income tax form to allow the designation of such contributions in the following form:

"New Mexico Housing Trust Fund - Check [ ] if you wish to contribute a part or all of your tax refund to the New Mexico Housing Trust Fund for affordable housing programs. Enter here $_________ the amount of your contribution."

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.

(Laws 2018, Chapter 51, Section 1 Applicable to taxable years beginning on or after January 1, 2018)

7-2-31. OPTIONAL DESIGNATION OF TAX REFUND.--

A. Any individual whose state income tax liability in any year is lower than the amount of money held by the taxation and revenue department to the credit of that individual for that tax year may designate two dollars ($2.00) of the income tax refund due the individual to be paid to a state political party. “State political party”, for the purposes of this section, means those parties that on January 1 of the taxable year for which the return is filed meet the requirements of Section 1-7-2(A) NMSA 1978. In the case of a joint return, each individual may make a designation.

B. The secretary of the department shall revise the state income tax form to allow on the face of the form the designation by individual taxpayers of contributions to state political parties in substantially the following form:

"New Mexico Political Party Income Tax Refund Check-off Check [ ] if you wish to contribute two dollars ($2.00) of your income tax refund to a state political party that qualifies as such under Section 1-7-2 NMSA 1978. My contribution should be made to the ___________________________ party."

(name of state political party)

C. The secretary of taxation and revenue shall provide a list on the state income tax form of the qualified state political parties to which the taxpayer may make a contribution.

D. 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.
7-2-31.1. OPTIONAL REFUND CONTRIBUTION PROVISIONS--CONDITIONAL REPEAL.--

A. By August 31, 2000, and by August 31 of every succeeding 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 provision of the Income Tax Act that allows a taxpayer the option of directing the department to contribute all or any part of an income tax refund due the taxpayer to a specified account, fund or entity.

B. If the secretary's determination pursuant to Subsection A of this section regarding an optional refund contribution provision is that the total amount contributed is less than five thousand dollars ($5,000), exclusive of directions for contributions disregarded under Subsection C of this section, the secretary shall certify that fact to the secretary of state. Any optional refund contribution provision for which a certification is made for three consecutive years is repealed, effective on the January 1 following the third certification.

C. 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.

D. Notwithstanding the provisions of Section 7-1-26 NMSA 1978, a taxpayer may not claim and the department may not allow a refund with respect to any optional refund contribution that was made by the department at the direction of the taxpayer.

(Laws 1999, Chapter 47, Section 5)
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)

7-2-34. DEDUCTION--NET CAPITAL GAIN INCOME.--
A. Except as provided in Subsection C of this section, 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 one thousand dollars ($1,000); or
   (2) forty percent of the taxpayer's net capital gain income 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. A taxpayer may not claim the deduction provided in Subsection A of this section if the taxpayer has claimed the credit provided in Section 7-2D-8.1 NMSA 1978.
D. As used in this section, "net capital gain" means "net capital gain" as defined in Section 1222 (11) of the Internal Revenue Code.
(Laws 2019, Chapter 270, Section 14; Applicable to taxable years beginning on or after January 1, 2019)
A. 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
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
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
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 XVIII 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 2000, 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)
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:
     - 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:
     - Not over $15,000: 25 percent
     - More than $15,000 but not more than $35,000: 15 percent
     - Over $35,000: 10 percent

3. For heads of household:
   - If adjusted gross income is:
     - 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 department shall compile an annual report on the deduction provided by this section that shall include the number of taxpayers that claimed the deduction, the aggregate amount of deductions claimed and any other information necessary to evaluate the effectiveness of the deduction. The department shall present the annual report to the revenue stabilization and tax policy committee and the legislative finance committee with an analysis of the cost of the deduction.

D. As used in this section, "dependent" means "dependent" as defined in Section 152 of the Internal Revenue Code."

(Laws 2019, Chapter 270, Section 15; Applicable to taxable years beginning on or after January 1, 2019)
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 department shall compile an annual report on the deduction provided by this section that shall include the number of taxpayers that claimed the deduction, the aggregate amount of deductions claimed and any other information necessary to evaluate the cost of the deduction. The department shall provide the report to the revenue stabilization and tax policy committee and the legislative finance committee with an analysis of the 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 2021, Chapter 7, Section 1)