E. No court of this state has jurisdiction to entertain a proceeding by any person in which the person calls into question the application to that person of any provision of the Motor Vehicle Code, except as a consequence of the appeal by that person to the district court from the action and order of the hearing officer as provided for in this section.

F. Nothing in this section shall be construed to authorize a criminal proceeding or to authorize an administrative protest of the issuance of a subpoena or summons.

History: Laws 2015, ch. 73, § 9.

ANNOTATIONS

Effective dates. — Laws 2015, ch. 73, § 38 made Laws 2015, ch. 73, § 9 effective July 1, 2015.

7-1B-10. Appointment of hearing officer for expedited adjudicatory proceedings under the Medicaid Provider and Managed Care Act.

The chief hearing officer shall select a hearing officer for expedited adjudicatory proceedings as provided by the Medicaid Provider and Managed Care Act.

History: Laws 2019, ch. 215, § 17.

ANNOTATIONS

Effective dates. — Laws 2019, ch. 215, § 20 made Laws 2019, ch. 215, § 17 effective January 1, 2020.

Severability. — Laws 2019, ch. 215, § 19, provided that if any part or application of this act is held invalid, the remainder or its application to other situations or persons shall not be affected.

ARTICLE 2
Income Tax General Provisions

7-2-1. Short title.

Chapter 7, Article 2 NMSA 1978 may be cited as the "Income Tax Act".

History: 1953 Comp., § 72-15A-1, enacted by Laws 1965, ch. 202, § 1; 1979, ch. 92, § 1.

ANNOTATIONS

Cross references. — For administration and enforcement, *see* 7-1-2 and 7-2-22 NMSA 1978.

For limitations on power of municipalities to tax incomes, *see* 3-18-2 NMSA 1978.

Law reviews. — For article, "An Intergovernmental Approach to Tax Reform," see 4 N.M.L. Rev. 189 (1974).

For comment, "Coal Taxation in the Western States: The Need for a Regional Tax Policy," see 16 Nat. Resources J. 415 (1976).

For article, "The Indian Tax Cases - A Territorial Analysis," see 9 N.M.L. Rev. 221 (1979).

For article, "New Mexico Taxes: Taking Another Look," see 32 N.M.L. Rev. 351 (2002).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 71 Am. Jur. 2d State and Local Taxation §§ 443 to 611.

What constitutes "reasonable cause" under state statutes imposing penalty on taxpayer for failure to file timely tax return unless such failure was due to "reasonable cause," 29 A.L.R.4th 413.

Damages for breach of contract as affected by income tax considerations, 50 A.L.R.4th 452.

Decision to take foreign income taxes as federal credit under § 901 of the Internal Revenue Code (26 USCS § 901) as precluding their deduction for state income tax purposes, 77 A.L.R.4th 823.

85 C.J.S. Taxation §§ 1693 et seq.

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

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

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

(c) in either case, if the net operating loss carryover exceeds the amount of net income exclusive of the net operating loss carryover for the taxable year to which the exclusion first applies, in the next nineteen succeeding taxable years in turn until the net operating loss carryover is exhausted for any net operating loss carryover from a taxable year beginning on or after January 1, 2013; in no event shall a net operating

loss carryover from a taxable year beginning: 1) prior to January 1, 2013 be excluded in any taxable year after the fourth taxable year beginning after the taxable year to which the exclusion first applies; and 2) on or after January 1, 2013 be excluded in any taxable year after the nineteenth taxable year beginning after the taxable year to which the exclusion first applies; and

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

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

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

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

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

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

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

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

V. "state or local bond" means a bond issued by a state other than New Mexico or by a local government other than one of New Mexico's political subdivisions, the interest

from which is excluded from income for federal income tax purposes under Section 103 of the Internal Revenue Code, as that section may be amended or renumbered;

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

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

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

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

History: 1978 Comp., § 7-2-2, enacted by Laws 1986, ch. 20, § 26; 1987, ch. 277, § 1; 1988, ch. 41, § 1; 1990, ch. 49, § 1; 1991, ch. 9, § 24; 1993, ch. 307, § 1; 2003, ch. 13, § 1; 2003, ch. 275, § 1; 2007, ch. 45, § 7; 2010 (2nd S.S.), ch. 7, § 7; 2014, ch. 53, § 1; 2021 (1st S.S.), ch. 4, § 51; 2023, ch. 17, § 1; 2023, ch. 159, § 1.

ANNOTATIONS

Cross references. — For Sections 55, 62, 63, 103, 151, 172, and 402 of the Internal Revenue Code, *see* 26 U.S.C. §§ 55, 62, 63, 103, 151, 172, and 402 respectively.

2023 Multiple Amendments. — Laws 2023, ch. 17, § 1 and Laws 2023, ch. 159, § 1, both effective June 16, 2023, enacted different amendments to this section that can be reconciled. Pursuant to 12-1-8 NMSA 1978, Laws 2023, ch. 159, § 1 as the last act signed by the governor is set out above and incorporates both amendments. The amendments enacted by Laws 2023, ch. 17, § 1 and Laws 2023, ch. 159, § 1 are described below. To view the session laws in their entirety, *see* the 2023 session laws on *NMOneSource.com*.

The nature of the difference between the amendments is that Laws 2023, ch. 17, § 1, revised the definition of "base income", and Laws 2023, ch. 159, § 1, revised the definitions of "base income" and "net income".

Laws 2023, ch. 159, § 1, effective June 16, 2023, revised the definitions of "base income" and "net income"; in Subsection B, added Subparagraph B(1)(b) and Subparagraph B(2)(b); and in Subsection N, deleted former Paragraphs N(6) and N(7) and redesignated former Paragraphs N(8) and N(9) as Paragraphs N(6) and N(7), respectively.

Laws 2023, ch. 17, § 1, effective June 16, 2023, revised the definition of "base income"; and in Subsection B, Subparagraph B(4)(b), after "pay for", added "federally

allowable", after "qualified higher education expenses", deleted "as defined pursuant to" and added "set out in", and added "including other expenses allowed pursuant to that section as qualified expenses".

Applicability. — Laws 2023, ch. 159, § 5 provided that the provisions of Laws 2023, ch. 159 apply to taxable years beginning on or after January 1, 2023.

The 2021 (1st S.S.) amendment, effective June 29, 2021, excluded from the definition of "base income", as used in the Income Tax Act, 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 for certain taxpayers; and in Subsection B, added Paragraph B(5).

The 2014 amendment, effective May 21, 2014, excluded net operating loss carryover from net income for twenty years; in Subsection N, in Paragraph (7), after the first and second instances of "January 1, 1991", added "and prior to January 1, 2013"; in Subsection N, in Paragraph (7), in Subparagraph (c), after "carryover is exhausted", added "for any net operating loss carryover from a taxable year prior to January 1, 2013", after "operating loss carryover", added "from a taxable year beginning prior to January 1, 2013"; in Subsection N, added Paragraph (8), including Subparagraphs (a) through (c); and in Subsection P, after "Paragraph (6), (7)", added "or (8)".

Applicability. — Laws 2014, ch. 53, § 3 provided that the provisions of Laws 2014, ch. 53, §§ 1 and 2 applies to taxable years beginning on or after January 1, 2013.

The 2010 (2nd S.S.) amendment, effective July 1, 2010, in Subsection N(2), after "Paragraph (1) of this subsection", added the remainder of the sentence; and added Paragraph (8) of Subsection N.

Temporary provisions. — Laws 2010, ch. 7, § 12 provided that for the 2010 taxable year, a taxpayer is deemed to have complied with the provisions of Section 7-2-12.2 NMSA 1978 if the taxpayer has made the required annual payments of estimated taxes due for taxable year 2010 based on the definition of net income in Section 7-2-2 NMSA 1978 applicable prior to January 1, 2010.

The 2007 amendment, effective June 15, 2007, in Paragraph (4) of Subsection M, changed "pursuant to Sections 7-2-14, 7-2-18, 7-2-18.1" to "for credits and rebates pursuant to the Income Tax Act" and added "made for a credit pursuant to Section 7-3-9 NMSA 1978".

The 2003 amendment, effective June 20, 2003, added Paragraph B(4); in Subsection K, deleted "an amount that" near the beginning, inserted "an amount that" following "federal income tax"; deleted "derived" near the end of Subsection L and in Paragraphs L(2) and (3); substituted "excludes" for "does not include" in Subsection M; deleted "whether made" following "or drug expenses" in Paragraph M(1); deleted "made" near the beginning of Paragraphs M(3) and (4); deleted "7-2-14.1" in Paragraph M(4); in

Subsection S, substituted "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," for "but any individual" preceding "who, on or", inserted "for periods after that change of abode" at the end.

The 1993 amendment, effective June 18, 1993, added the language beginning "in no event" at the end of Subparagraph (7)(c) of Subsection N and inserted "limited liability company" in Subsection R.

The 1991 amendment, effective June 14, 1991, rewrote Subsection B; deleted "or 'division'" following "'department'" in Subsection D; in Subsection M, substituted "or" for "and" at the end of Paragraph (3) and deleted reference to 7-2-15 NMSA 1978 in Paragraph (4); rewrote Subsection N; added present Subsections O, P and V; redesignated former Subsections O to S and T to W as present Subsections Q to U and W to Z, respectively; in present Subsection T, deleted "or 'director'" following "'secretary'"; and made a minor stylistic change in Subsection K.

The 1990 amendment, effective May 16, 1990, deleted former Subsection E which defined "director" as "the secretary of taxation and revenue or the secretary's delegate"; redesignated former Subsections F to K as present Subsections E to J; substituted "a trust or a fiduciary" for "trust or fiduciary" in present Subsection I; inserted "of 1986" after "Code" in present Subsection J; added present Subsection K; in Subsection L; inserted "of the taxpayer and, if any, the taxpayer's spouse and dependents" and substituted "workers' " for "workmen's" in Paragraph (18); in Paragraph (1) of Subsection N, inserted "the greater of the basic 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, or an amount equal to"; inserted the subparagraph designation "(a)"; redesignated former Paragraphs (2) to (4) of Subsection N as present Subparagraphs (b) to (d) of Paragraph (1) and deleted "an amount equal to" at the beginning of each of the redesignated subparagraphs; in Subsection N, redesignated former Paragraphs (5) to (7) as present Paragraphs (2) to (4), substituted "Paragraph (1) of this subsection" for "Paragraph (1), (2), (3) or (4) of this subsection" in present Paragraph (2), rewrote present Paragraph (3) which read "an amount equal to two thousand dollars ($2,000) multiplied by the number of personal exemptions allowed for federal income tax purposes"; inserted "or 'director' " in Subsection R; and added present Subsection U and redesignated former Subsections U and V as present Subsections V and W.

"Income". — Taxpayers' wages and salaries from employment constituted "income" for purposes of determining their tax liability. *Holt v. N.M. Dep't of Taxation & Revenue*, 2002-NMSC-034, 133 N.M. 11, 59 P.3d 491.

"Resident" defined. — New Mexico "resident" is an individual domiciled in New Mexico at any time during the taxable year who does not intentionally change his domicile by

the end of the year. *Murphy v. Taxation & Revenue Dep't*, 1980-NMSC-012, 94 N.M. 54, 607 P.2d 592.

Basis of residence. — Definition of "resident" is based on both person's domicile and his intent. *Murphy v. Taxation & Revenue Dep't*, 1980-NMSC-012, 94 N.M. 54, 607 P.2d 592.

State tax statutes may constitutionally refer to federal definitions. — A state has the power to gauge its income tax by reference to the income on which the taxpayer is required to pay a tax to the United States, and the constitutionality of state statutes which refer to the Internal Revenue Code definitions have been upheld. *Champion Int'l Corp. v. Bureau of Revenue*, 1975-NMCA-106, 88 N.M. 411, 540 P.2d 1300, cert. denied, 89 N.M. 5, 546 P.2d 70.

Election to treat unrealized gain as federal income makes it state income. — When multistate corporate taxpayer elected to treat the cutting of certain timber as a sale or exchange, eligible for taxation at capital gains rates, even though the timber had not actually been sold, it was held that since its federal income tax was calculated by use of this gain, the gain was includable in its base income for New Mexico income tax purposes. *Champion Int'l Corp. v. Bureau of Revenue*, 1975-NMCA-106, 88 N.M. 411, 540 P.2d 1300, cert. denied, 89 N.M. 5, 546 P.2d 70.

Gain may be included in apportionable income of multistate corporation. — New Mexico was not taxing on out-of-state activity where it included gain from the cutting of timber treated by the taxpayer as a sale or exchange for federal tax purposes in the apportionable business income of the corporation. *Champion Int'l Corp. v. Bureau of Revenue*, 1975-NMCA-106, 88 N.M. 411, 540 P.2d 1300, cert. denied, 89 N.M. 5, 546 P.2d 70.

Law reviews. — For symposium, "Tax Implications of the Equal Rights Amendment," see 3 N.M.L. Rev. 69 (1973).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 71 Am. Jur. 2d State and Local Taxation §§ 483 to 511.

Construction and application of state corporate income tax statutes allowing net operating loss deductions, 33 A.L.R.5th 509.

85 C.J.S. Taxation §§ 1715 to 1719.

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.

History: 1953 Comp., § 72-15A-3, enacted by Laws 1965, ch. 202, § 3; 1979, ch. 92, § 2; 1981, ch. 37, § 14.

ANNOTATIONS

Cross references. — *See* case notes to 7-2-2 NMSA 1978.

For income tax rates, *see* 7-2-7 and 7-2-7.1 NMSA 1978.

Temporary provisions. — Laws 2020 (1st S.S.), ch. 4, § 4, effective June 29, 2020, provided:

A. Notwithstanding Sections 7-1-67 and 7-1-69 NMSA 1978, no interest shall accrue and no penalty shall be assessed to a taxpayer for:

(1) tax liabilities pursuant to the Income Tax Act or the Corporate Income and Franchise Tax Act for failure to pay the tax that became due April 15, 2020 through July 15, 2020; provided that the failure to pay the tax was made without intent to evade or defeat the tax; and provided further that payment for the unpaid payments is made in full on or before April 15, 2021;

(2) tax liabilities pursuant to the Withholding Tax Act for failure to pay the tax that became due March 25, 2020 through July 25, 2020; provided that the failure to pay the tax was made without intent to evade or defeat the tax; and provided further that payment for the unpaid taxes is made in full on or before April 25, 2021;

(3) gross receipts tax, local option gross receipts tax or compensating tax liabilities for failure to pay any of those taxes that became due March 25, 2020 through July 25, 2020; provided that the failure to pay the tax was made without intent to evade or defeat the tax; and provided further that payment for the unpaid taxes is made in full on or before April 25, 2021; and

(4) tax liabilities assessed between September 3, 2019 and January 3, 2020 as the result of a managed audit performed in accordance with a managed audit agreement pursuant to Section 7-1-11.1 NMSA 1978; provided that payment for those liabilities is made pursuant to terms of the managed audit agreement on or before December 31, 2020.

B. Notwithstanding Sections 7-38-49 and 7-38-50 NMSA 1978, no interest shall accrue and no penalty shall be assessed to a property owner for unpaid property taxes that became due April 10, 2020 pursuant to Section 7-38-38 NMSA 1978; provided that:

(1) the unpaid property taxes did not become delinquent because of an intent to defraud by the property owner;

(2) payment for the unpaid property taxes is made in full on or before May 10, 2021; and

(3) the subject property does not have property taxes that became delinquent pursuant to Section 7-38-46 NMSA 1978 prior to May 10, 2020.

Constitutionality of tax on nonresidents. — The opportunity to exercise "intelligence, skill and labor while employed in the State of New Mexico" is a sufficient benefit to support imposition of state income tax on nonresident employees of a federal enclave. *Lung v. O'Chesky*, 1980-NMSC-104, 94 N.M. 802, 617 P.2d 1317.

Retirement income. — An income tax exemption granted to retirees of New Mexico state educational institutions, but not extended to retirees of California state educational institutions, does not discriminate against the federal government in violation of the doctrine of intergovernmental tax immunity (ITI) when the federal government funds the retirement accounts of the California state educational institution retirees. The same exemption does not discriminate against the sovereign State of California in violation of the ITI doctrine. *Alarid v. Sec'y of Dep't of Taxation & Revenue*, 1994-NMCA-075, 118 N.M. 23, 878 P.2d 341, cert. denied, 118 N.M. 90, 879 P.2d 91, cert. denied, 513 U.S. 1081, 115 S.Ct. 733, 130 L.Ed.2d 636 (1994).

Tax burden should fall with uniformity and equality upon the class of persons sought to be taxed. *N.M. Elec. Serv. Co. v. Jones*, 1969-NMCA-111, 80 N.M. 791, 461 P.2d 924.

"Income". — Taxpayers' wages and salaries from employment constituted "income" for purposes of determining their tax liability. *Holt v. N.M. Dep't of Taxation & Revenue*, 2002-NMSC-034, 133 N.M. 11, 59 P.3d 491.

State taxes domiciliaries' net income and nondomiciliaries' property income. — New Mexico taxes the net income of all New Mexicans and all nondomiciliaries deriving income from property in New Mexico. *Murphy v. Taxation & Revenue Dep't*, 1980-NMSC-012, 94 N.M. 54, 607 P.2d 592.

Income of Indians from activities on reservation exempt. — New Mexico may not tax income and gross receipts of Indians residing on a reservation when the income and gross receipts involved are derived solely from activities within the reservation. *Hunt v. O'Cheskey*, 1973-NMCA-026, 85 N.M. 381, 512 P.2d 954, cert. quashed, 85 N.M. 388, 512 P.2d 961.

Indian on other tribe's reservation may be taxed. — Income earned by Native Americans while living and working on reservations of which they are not tribunal members is taxable by the state. *N.M. Taxation & Revenue Dep't v. Greaves*, 1993-NMCA-133, 116 N.M. 508, 864 P.2d 324.

State tax statutes may constitutionally refer to federal definitions. — A state has the power to gauge its income tax by reference to the income on which the taxpayer is required to pay a tax to the United States, and the constitutionality of state statutes which refer to the Internal Revenue Code definitions have been upheld. *Champion Int'l Corp. v. Bureau of Revenue*, 1975-NMCA-106, 88 N.M. 411, 540 P.2d 1300, cert. denied, 89 N.M. 5, 546 P.2d 70.

Election to treat unrealized gain as federal income makes it state income. — When multistate corporate taxpayer elected to treat the cutting of certain timber as a sale or exchange, eligible for taxation at capital gains rates, even though the timber had not actually been sold, it was held that since its federal income tax was calculated by use of this gain, the gain was includable in its base income for New Mexico income tax purposes. *Champion Int'l Corp. v. Bureau of Revenue*, 1975-NMCA-106, 88 N.M. 411, 540 P.2d 1300, cert. denied, 89 N.M. 5, 546 P.2d 70.

Gain may be included in apportionable income of multistate corporation. — New Mexico was not taxing on out-of-state activity where it included gain from the cutting of timber treated by the taxpayer as a sale or exchange for federal tax purposes in the apportionable business income of the corporation. *Champion Int'l Corp. v. Bureau of Revenue*, 1975-NMCA-106, 88 N.M. 411, 540 P.2d 1300, cert. denied, 89 N.M. 5, 546 P.2d 70.

Law reviews. — For note, New Mexico Taxes Non-Member Indians Who Work on a Reservation: *New Mexico Taxation and Revenue Dep't v. Greaves*, see 25 N.M.L. Rev. 129 (1995).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 71 Am. Jur. 2d State and Local Taxation §§ 470 to 474, 512 to 517.

85 C.J.S. Taxation § 1715 to 1719.

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.

History: 1953 Comp., § 72-15A-4, enacted by Laws 1965, ch. 202, § 4; 1969, ch. 152, § 2; 1971, ch. 20, § 2; 1981, ch. 37, § 15.

ANNOTATIONS

Cross references. — For exemption of severance tax bonds from taxation, *see* 7-27-24 NMSA 1978.

For exemption of mortgage finance authority and bonds and notes thereof, *see* 58-18-18 NMSA 1978.

For the Internal Revenue Code, *see* 26 U.S.C. § 1 et seq.

Tax burden should fall with uniformity and equality upon the class of persons sought to be taxed. *N.M. Elec. Serv. Co. v. Jones*, 1969-NMCA-111, 80 N.M. 791, 461 P.2d 924.

Exemptions strictly construed. — In pursuance of the beneficent public policy which favors equality in the distribution of the burden of government, all exemptions of persons or property from taxation are to be construed strictly against the exemption; the intention to create exemptions must affirmatively appear and cannot be raised by implication. *N.M. Elec. Serv. Co. v. Jones*, 1969-NMCA-111, 80 N.M. 791, 461 P.2d 924.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 71 Am. Jur. 2d State and Local Taxation §§ 362 to 391, 475 to 482.

Construction of exemption of religious body or society from taxation or special assessment, 17 A.L.R. 1027, 168 A.L.R. 1222.

Exemption of charitable organization from taxation or special assessment, 34 A.L.R. 634, 62 A.L.R. 328, 108 A.L.R. 284.

Extent of area within tax exemption extended to property used for educational, religious, or charitable purposes, 134 A.L.R. 1176.

Exemption of college fraternity house or dormitory from taxation, 66 A.L.R.2d 904.

When is corporation, community chest, fund, foundation or club "organized and operated exclusively" for charitable or other exempt purposes under Internal Revenue Code, 69 A.L.R.2d 871.

Qualification of health care entities for federal tax exemption as charitable organization under 26 USCS § 501(c)(3), 134 A.L.R. Fed. 395.

84 C.J.S. Taxation §§ 321 to 393; 85 C.J.S. Taxation §§ 1715 to 1719, 1736 to 1737.

7-2-5. Repealed.

ANNOTATIONS

Repeals. — Laws 1990, ch. 49, § 18 repealed 7-2-5 NMSA 1978, as enacted by Laws 1967, ch. 70, § 1, relating to exemptions for annuities to retired federal civil service employees, effective May 16, 1990. For provisions of former section, *see* the 1989 NMSA 1978 on *NMOneSource.com.*

7-2-5.1. Repealed.

ANNOTATIONS

Repeals. — Laws 1990, ch. 49, § 18 repealed 7-2-5.1 NMSA 1978, as enacted by Laws 1979, ch. 342, § 1, relating to exemptions for military retirement pay, effective May 16, 1990. For provisions of former section, *see* the 1989 NMSA 1978 on *NMOneSource.com.*

7-2-5.2. Exemption; income of persons sixty-five and older or blind.

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

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

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

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

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

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

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

History: 1978 Comp., § 7-2-5.2, enacted by Laws 1985, ch. 114, § 1; 1987, ch. 264, § 6.

ANNOTATIONS

Applicability. — Laws 1987, ch. 264, § 27 made the provisions of Sections 6 and 7 and Subsection B of Section 25 of the act applicable to taxable years beginning on or after January 1, 1987.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 71 Am. Jur. 2d State and Local Taxation §§ 334, 464.

85 C.J.S. Taxation §§ 1736 and 1737.

7-2-5.3. Repealed.

ANNOTATIONS

Repeals. — Laws 1990, ch. 49, § 18 repealed 7-2-5.3 NMSA 1978, as amended by Laws 1987, ch. 277, § 2, relating to exemption for social security and railroad retirement benefits, effective May 16, 1990. For provisions of former section, *see* the 1989 NMSA 1978 on *NMOneSource.com.*

7-2-5.4. Repealed.

History: 1978 Comp., § 7-2-5.4, enacted by Laws 1988, ch. 59, § 1; 1995, ch. 11, § 1; 2007, ch. 45, § 14.

ANNOTATIONS

Repeals. — Laws 2007, ch. 45, § 14 repealed 7-2-5.4 NMSA 1978, being Laws 1988, ch. 59, § 1, relating to tax exemptions for an adopted special needs child, effective for tax years beginning on or after January 1, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMOneSource.com.*

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.

History: Laws 1995, ch. 42, § 1; 2023, ch. 85, § 7.

ANNOTATIONS

The 2023 amendment, effective July 1, 2023, clarified language related to the exemption of income by members of New Mexico federally recognized nations, tribes, bands, or pueblos; after "within the boundaries of", deleted "lands held in trust by the United States for the benefit of the member or spouse or his nation, tribe, band or pueblo, subject to restriction against alienation imposed by the United States" and

added "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".

7-2-5.6. Exemption; medical care savings accounts.

Except as provided in Section 6 [59A-23D-6 NMSA 1978] of this act, employer and employee contributions to medical care savings accounts established pursuant to the Medical Care Savings Account Act [Chapter 59A, Article 23D NMSA 1978], 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.

History: Laws 1995, ch. 93, § 8.

ANNOTATIONS

Effective dates. — Laws 1995, ch. 93 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 1995, 90 days after the adjournment of the legislature.

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.

History: Laws 2002, ch. 58, § 1.

ANNOTATIONS

Effective dates. — Laws 2002, ch. 58 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 15, 2002, 90 days after adjournment of the legislature.

7-2-5.8. Exemption for low- and middle-income taxpayers.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

History: Laws 2005, ch. 104, § 5; 2007, ch. 45, § 8.

ANNOTATIONS

The 2007 amendment, effective June 15, 2007, in Subsection A, deleted the provision that individuals who have income in and out of the state shall apportion the exemption in accordance with regulations of the secretary; in Subsection B, changed $20,333 to $27,500; in Paragraph (1) of Subsection B, changed $12,000 to $15,000; in Paragraph (2) of Subsection B, changed the minimum from $12,000 to $15,000 and the maximum from $20,333 to $27,500; in Subparagraph (b) of Paragraph (2) of Subsection B, changed $12,000 to $15,000; in Subsection C, changed $27,110 to $36,667; in Paragraph (1) of Subsection C, changed $16,000 to $20,000 and in Paragraph (2) of Subsection C, changed the maximum from $27,110 to $36,667; in Subparagraph (b) of Paragraph (2) of Subsection C, changed $16,000 to $20,000; in Subsection D, changed $40,667 to $55,000; in Paragraph (1) of Subsection D, changed $24,000 to $30,000; in Paragraph (2) of Subsection D, changed the minimum from $24,000 to $30,000 and the maximum from $40,667 to $55,000; in Subparagraph (b) of Paragraph (2) of Subsection D, changed $24,000 to $30,000; and deleted former Subsection E, which defined "federal exemption" as an exemption allowable for federal income tax purposes for an individual included in the return who is domiciled in New Mexico.

Applicability. — Laws 2007, ch. 45, § 15 provided that Laws 2007, ch. 45, § 8 applied to taxable years beginning on or after January 1, 2007.

7-2-5.9. Exemption; unreimbursed or uncompensated medical care expenses of individuals sixty-five years of age or older.

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

B. As used in this section:

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

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

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

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

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

(b) prescribed drugs or insulin;

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

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

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

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

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

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

History: Laws 2005, ch. 104, § 6.

ANNOTATIONS

Effective dates. — Laws 2005, ch. 104, § 29, made Laws 2005, ch. 104, § 6 effective January 1, 2006.

Applicability. — Laws 2005, ch. 104, § 29 provided that Laws 2005, ch. 104, § 6 applied to taxable years beginning on or after January 1, 2007.

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.

History: Laws 2006, ch. 50, § 1.

ANNOTATIONS

Effective dates. — Laws 2006, ch. 50, § 3 made Laws 2006, ch. 50, § 1 effective March 2, 2006.

Applicability. — Laws 2006, ch. 50, § 2, effective March 2, 2006, provided that Laws 2006, ch. 50, § 1 applies to taxable years beginning on or after January 1, 2005.

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.

History: Laws 2007, ch. 45, § 11.

ANNOTATIONS

Effective dates. — Laws 2007, ch. 45, § 11, contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 15, 2007, 90 days after the adjournment of the legislature.

Applicability. — Laws 2007, ch. 45, § 15 provided that Laws 2007, ch. 45, §§ 7 through 11 apply to taxable years beginning on or after January 1, 2007.

Service in the United States public health service is not service in the armed forces. — Where taxpayer claimed a tax exemption for wages earned in the service of the United States public health service (USPHS) pursuant to this section, the hearing officer did not err in concluding that taxpayer was not in the "armed forces" for the relevant tax years and therefore did not qualify for the armed forces salaries exemption, because commissioned officers of the USPHS are not members of the "armed forces" as that term is defined in New Mexico state or federal statutes, and regulations defining "armed forces" do not modify this section of law, but were enacted to implement and enforce the New Mexico Income Tax Act. *Hammack v. Taxation & Revenue Dep't*, 2017-NMCA-086, cert. denied.

7-2-5.12. Repealed.

History: Laws 2022, ch. 46, § 1; repealed by Laws 2023, ch. 159, § 4.

ANNOTATIONS

Repeals. — Laws 2023, ch. 159, § 4 repealed 7-2-5.12 NMSA 1978, as enacted by Laws 2022, ch. 46, § 1, relating to exemption, income subject to entity-level tax, effective June 16, 2023. For provisions of former section, *see* the 2022 NMSA 1978 on *NMOneSource.com*.

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.

History: Laws 2022, ch. 47, § 6.

ANNOTATIONS

Effective dates. — Laws 2022, ch. 47, § 6 was effective May 18, 2022, 90 days after adjournment of the legislature.

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.

History: Laws 2022, ch. 47, § 7.

ANNOTATIONS

Effective dates. — Laws 2022, ch. 47, § 7 was effective May 18, 2022, 90 days after adjournment of the legislature.

Applicability. — Laws 2022, ch. 47, § 16 provided that the provisions of Laws 2022, ch. 47, § 7 apply to taxable years beginning on or after January 1, 2022.

7-2-6. Repealed.

ANNOTATIONS

Repeals. — Laws 1990, ch. 49, § 18 repealed 7-2-6 NMSA 1978, as enacted by Laws 1977, ch. 300, § 1, relating to exemptions for annuities paid to retired judges of the district court, court of appeals judges, and supreme court justices, effective May 16, 1990. For provisions of former section, *see* the 1989 NMSA 1978 on *NMOneSource.com.*

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, 2021:

A. For married individuals filing separate returns:

If the taxable income is:	The tax shall be:
Not over $4,000	1.7% of taxable income
Over $4,000 but not over $8,000	$68.00 plus 3.2% of excess over $4,000
Over $8,000 but not over $12,000	$196 plus 4.7% of excess over $8,000
Over $12,000 but not over $157,500	$384 plus 4.9% of excess over $12,000

Over $157,500	$7,513.50 plus 5.9% of excess over $157,500.

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

If the taxable income is:	The tax shall be:
Not over $8,000	1.7% of taxable income
Over $8,000 but not over $16,000	$136 plus 3.2% of excess over $8,000
Over $16,000 but not over $24,000	$392 plus 4.7% of excess over $16,000
Over $24,000 but not over $315,000	$768 plus 4.9% of excess over $24,000
Over $315,000	$15,027 plus 5.9% of excess over $315,000.

C. For single individuals and for estates and trusts:

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

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.

History: Laws 2005, ch. 104, § 4; 2019, ch. 270, § 12.

ANNOTATIONS

Compiler's notes. — Pursuant to Laws 2019, ch. 270, § 61, the effective date of Laws 2019, ch. 270, § 12 is December 18, 2020. On December 18, 2020, the secretary of the New Mexico department of finance and administration certified to the New Mexico compilation commission and the director of the legislative council service that fiscal year 2020 recurring general fund revenues are less than five percent above fiscal year 2019 recurring general fund revenues.

The 2019 amendment, effective December 18, 2020, revised individual income tax rates and individual income tax brackets; in Subsection A, after "If the taxable income is", deleted the remainder of the subsection; and deleted former Subsections B and C, and added new Subsections B and C.

Applicability. — Laws 2019, ch. 270, § 59 provided that the provisions of Laws 2019, ch. 270, § 12 apply to taxable years beginning on or after January 1, 2021.

7-2-7. Individual income tax rates. (Effective January 1, 2006 through December 31, 2007.)

The tax imposed by Section 7-2-3 NMSA 1978 shall be at the following rates for taxable years beginning in 2006 or 2007:

A. For married individuals filing separate returns:

If the taxable income is:	The tax shall be:
Not over $4,000	1.7% of taxable income
Over $ 4,000 but not over $ 8,000	$ 68.00 plus 3.2% of excess over $ 4,000
Over $ 8,000 but not over $ 12,000	$ 196 plus 4.7% of excess over $ 8,000
Over $ 12,000	$ 384 plus 5.3% of excess over $ 12,000.

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

If the taxable income is:	The tax shall be:
Not over $8,000	1.7% of taxable income
Over $ 8,000 but not over $ 16,000	$ 136 plus 3.2% of excess over $ 8,000
Over $ 16,000 but not over $ 24,000	$ 392 plus 4.7% of excess over $ 16,000

Over $ 24,000	$ 768 plus 5.3% of excess over $ 24,000.

C. For single individuals and for estates and trusts:

If the taxable income is:	The tax shall be:
Not over $5,500	1.7% of taxable income
Over $ 5,500 but not over $ 11,000	$ 93.50 plus 3.2% of excess over $ 5,500
Over $ 11,000 but not over $ 16,000	$ 269.50 plus 4.7% of excess over $ 11,000
Over $ 16,000	$ 504.50 plus 5.3% of excess over $ 16,000.

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.

History: 1953 Comp. 72-15A-5; 1994, ch. 5, § 20; 2003, ch. 2, § 2; repealed and reenacted by Laws 2003, ch. 2, § 3; repealed and reenacted by Laws 2003, ch. 2, § 4; 2005 (1st S.S.) ch. 3, § 1; repealed and reenacted by Laws 2005 (1st S.S.) ch. 3, § 2.

ANNOTATIONS

2005 Multiple Amendments. — Laws 2005 (1st S.S.), ch. 3, § 6, effective October 28, 2005, repealed Laws 2005, ch. 104, § 3 and Laws 2003, ch. 2, § 6, providing for personal income tax rates for the January 1, 2007 to December 31, 2007 tax year. Laws 2005 (1st S.S.), ch. 3, § 2 set out above, prescribed the personal income tax rates for both the 2006 and 2007 tax years.

Laws 2005, ch. 104, § 2, amended 7-2-7 NMSA 1978, as enacted by Laws 2003, ch. 2, § 5, for the January 1, 2006 to December 31, 2006 personal income tax year; Laws 2005 (1st S.S.), ch. 3, § 6 repealed Laws 2005, ch. 104, § 2 and Laws 2003, ch. 2, § 5, effective October 28, 2005. The above section was set out as amended by Laws 2005 (1st S.S.), ch. 3, §§ 1 and 2.

Laws 2005 (1st S.S.), ch. 3, § 2, amended the January 1, 2005 to December 31, 2005 version of 7-2-7 NMSA 1978 enacted by Laws 2003, ch. 2, § 4 and amended by Laws 2005 (1st S.S.), ch. 3, § 1 to reduce the top personal income tax rate from 5.7% to 5.3% for the January 1, 2006 to December 31, 2006 tax year for married individuals filing separate returns in excess of $12,000, for heads of household, surviving spouses and married individuals filing joint returns in excess of $24,000 and for single individuals and

for estates and trusts in excess of $16,000; Subsection B is amended to include heads of household returns; former Subsection D providing for separate tax rates for heads of household returns is deleted; and Subsection E is relettered as Subsection D. Laws 2005, ch. 3, § 2 was made effective January 1, 2006 by Laws 2005, ch. 3, § 7.

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.

History: 1978 Comp., § 7-2-7.1, enacted by Laws 1980, ch. 102, § 1; 1981, ch. 37, § 18; 1990, ch. 49, § 3; 1995, ch. 11, § 2.

ANNOTATIONS

The 1995 amendment, effective June 16, 1995, inserted "may be established either by regulation or by instruction but" in the second sentence and "or instruction" near the beginning of the third sentence.

The 1990 amendment, effective May 16, 1990, substituted "secretary" for "director" in the first and third sentences and for "secretary of taxation and revenue" near the middle and end of the third sentence.

7-2-7.2. Tax rebate; 2005 taxable year. (Effective for 2005 tax 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:

Adjusted Gross Income is:		And the total number of exemptions is:					
Over	But Not Over	1	2	3	4	5	6 or more
$0	$10,000	$139	$179	$214	$244	$269	$289
10,000	20,000	124	164	189	214	234	249
20,000	35,000	109	139	164	184	199	209
35,000	45,000	94	119	139	154	164	169
45,000	60,000	79	104	124	139	149	154
60,000		64	84	99	109	114	119.

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.

History: Laws 2005 (1st S.S.), ch. 3, § 3.

ANNOTATIONS

7-2-7.3. Exemption; 2005 taxable year rebate. (Effective for 2005 tax year.)

The tax rebate made for the 2005 taxable year pursuant to this 2005 act is exempt from state income tax.

History: Laws 2005 (1st S.S.), ch. 3, § 4.

ANNOTATIONS

Effective dates. — Laws 2005 (1st S.S.), ch. 3, § 8 made Laws 2005 (1st S.S.), ch. 3, § 4 effective October 28, 2005.

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.

History: Laws 2021, ch. 4, § 2.

ANNOTATIONS

Emergency clauses. — Laws 2021, ch. 4, § 6 contained an emergency clause and was approved March 3, 2021.

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.

History: Laws 2022 (3rd S.S.), ch. 2, § 1.

ANNOTATIONS

Emergency clauses. — Laws 2022 (3rd S.S.), ch. 2, § 5 contained an emergency clause and was approved April 8, 2022.

Temporary provisions. — Laws 2022 (3rd S.S.), ch. 2, § 2 provided that:

A. The human services department shall provide a relief payment to state residents on a first-come, first-served basis pursuant to this section until the appropriation pursuant to Subsection A of Section 4 of Laws 2022 (3rd S.S.), ch. 2 is exhausted; provided that the state residents:

(1) are not eligible for a tax rebate provided by 7-2-7.5 NMSA 1978;

(2) are not dependents, as that term is used in the Income Tax Act, of a recipient of a rebate provided by 7-2-7.5 NMSA 1978;

(3) were at least eighteen years of age during any part of 2021; and

(4) file an application with the department by May 31, 2023.

B. For a resident who applies to the department by May 31, 2022, the relief payment shall be made as soon as possible, but no later than July 31, 2022, in the following amounts:

(1) one thousand dollars ($1,000) for households of married couples or single individuals with one or more dependents; and

(2) five hundred dollars ($500) for households of single individuals without dependents.

C. For a resident who files an application after May 31, 2022, the relief payment shall be made in the amounts and as provided in Subsection B of this section as soon as possible after the application is received; provided that a relief payment shall not be allowed for an application received after May 31, 2023.

D. The department shall require a resident to apply for the relief provided by this section on forms and in a manner required by the department. The application shall include documentation of the resident's social security number or individual taxpayer identification number.

Laws 2022 (3rd S.S.), ch. 2, § 3 provided that if revenues and transfers to the general fund are not sufficient to meet appropriations at the end of fiscal year 2022 due to the cost of the rebates and relief payments provided by this act, the governor, with state board of finance approval, may transfer to the appropriation account of the general fund the amount necessary to meet that fiscal year's obligations from the tax stabilization reserve pursuant to Section 6-4-2.2 NMSA 1978; provided that the total amount transferred pursuant to this section shall not exceed two hundred million dollars ($200,000,000).

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.

History: Laws 2022, ch. 47, § 4.

ANNOTATIONS

Effective dates. — Laws 2022, ch. 47, § 17 made Laws 2022, ch. 47, § 4 effective July 1, 2022.

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.

History: Laws 2023, ch. 211, § 11.

ANNOTATIONS

Effective dates. — Laws 2023, ch. 211, § 44 made Laws 2023, ch. 211, § 11 effective April 1, 2023. However, Laws 2023, ch. 211 did not contain an emergency clause provision, and therefore, cannot have an effective date earlier than 90 days after the end of the legislative session. Laws 2023, ch. 211, § 11 is effective June 16, 2023.

7-2-8. Repealed.

ANNOTATIONS

Repeals. — Laws 1981, ch. 37, § 96, repealed 7-2-8 NMSA 1978, as enacted by Laws 1965, ch. 202, § 6, relating to corporate income tax rates, effective June 19, 1981.

7-2-9. Tax computation; alternative method.

For those taxpayers who do not compute an amount upon which the federal income tax is calculated or who do not compute their federal income tax payable for the taxable year, the secretary shall prescribe such regulations or instructions as the secretary may deem necessary to enable them to compute their state income tax due.

History: 1953 Comp., § 72-15A-7, enacted by Laws 1965, ch. 202, § 7; 1981, ch. 37, § 19; 1990, ch. 49, § 4.

ANNOTATIONS

The 1990 amendment, effective May 16, 1990, substituted "secretary shall" and "the secretary may deem" for "director shall" and "he may deem".

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.

History: 1953 Comp., § 72-15A-8, enacted by Laws 1965, ch. 202, § 8; 1981, ch. 37, § 20.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 71 Am. Jur. 2d State and Local Taxation §§ 474, 483, 493.

85 C.J.S. Taxation §§ 1693 et seq.

7-2-11. Tax credit; income allocation and apportionment.

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

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

(2) except as provided otherwise in Paragraph (1) of this subsection, income other than compensation or gambling winnings shall be allocated and apportioned as provided in the Uniform Division of Income for Tax Purposes Act [Chapter 7, Article 4 NMSA 1978], 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 [Chapter 7, Article 1 NMSA 1978];

(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.

History: 1953 Comp., § 72-15A-9, enacted by Laws 1965, ch. 202, § 9; 1969, ch. 152, § 5; 1974, ch. 56, § 1; 1981, ch. 37, § 21; 1986, ch. 20, § 28; 1990, ch. 49, § 5; 1995, ch. 11, § 3; 1996, ch. 16, § 1; 2001, ch. 329, § 1; 2016, ch. 59, § 1.

ANNOTATIONS

Cross references. — *See* case notes to 7-2-3 NMSA 1978.

For Multistate Tax Compact, *see* 7-5-1 NMSA 1978.

The 2016 amendment, effective May 18, 2016, provided a tax exemption for certain out-of-state businesses and individuals who respond to declared disasters within New Mexico; in Subsection A, Paragraph (4), after "provided", added "that the compensation may be allocated to the taxpayer's state of residence", in Subparagraph A(4)(a), after "taxable year", deleted "the compensation may be allocated to the taxpayer's state of residence; and", in Subparagraph A(4)(b), after "Items 1) through 4) of this subparagraph", deleted "the compensation may be allocated to the taxpayer's state of residence", and after the semicolon, added "or", and added a new Subparagraph A(4)(c).

The 2001 amendment, effective June 15, 2001, designated the proviso in former Paragraph A(4) as Subparagraph A(4)(a); and added Subparagraph A(4)(b).

The 1996 amendment, effective April 1, 1996, in Subsection A, inserted "gambling winnings" in Paragraphs (2) and (3), rewrote Paragraph (5), and inserted "allocated or" and "instructions, rulings or" in Paragraph (6).

The 1995 amendment, effective June 16, 1995, substituted "Paragraph (1)" for "Paragraphs (1) and (7)" near the beginning of Paragraph A(2); added the proviso at the end of Paragraph A(4); deleted former Paragraph A(7) relating to accounting by a taxpayer having business income both within and without this state and who began business in this state after July 1, 1991, but prior to January 1, 1991; and made stylistic changes throughout the section.

The 1990 amendment, effective May 16, 1990, added "Tax credit" in the section heading; designated the introductory paragraph of the section as Subsection A and deleted "prior to the application of the tax rates provided in Section 7-2-7 NMSA 1978" following "state shall be" therein; redesignated former Subsections A to G as Paragraphs (1) to (7) of Subsection A; and, in Subsection A, substituted "Paragraphs (1) and (7) of this subsection" for "Subsections A, G and H of this section" in Paragraph (2), substituted "Paragraph (1) of this subsection" for "Subsection A of this section" in Paragraph (3), substituted "Paragraph (1)" for "Subsection (A) of this section" in Paragraph (5), substituted "secretary" for "director" in Paragraph (6), inserted "but prior to January 1, 1991" in Paragraph (7), and added Subsections B and C.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 71 Am. Jur. 2d State and Local Taxation §§ 467, 472, 570, 574.

Computation of income tax as affected by fact that taxpayer was domiciled within state for only part of the taxable year, 126 A.L.R. 455.

85 C.J.S. Taxation §§ 1693 et seq.

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.

History: 1953 Comp., § 72-15A-10, enacted by Laws 1965, ch. 202, § 10; 1971, ch. 20, § 3; 1981, ch. 37, § 22; 1990, ch. 49, § 6; 2003, ch. 275, § 2; 2016, ch. 15, § 1.

ANNOTATIONS

Cross references. — *See* case notes to 7-2-2 and 7-2-3 NMSA 1978.

For reporting on fiscal year basis, *see* 7-2-20 NMSA 1978.

For income tax withholding, *see* 7-3-1 to 7-3-10 NMSA 1978.

The 2016 amendment, effective May 18, 2016, changed the due dates of income taxes to conform with due dates pursuant to federal law, and provided certain exceptions; in Subsection A, after "Except as provided in Subsection B of this section", deleted "the return required and the tax imposed on individuals under the Income Tax Act are due and payment is required on or before the fifteenth day of the fourth month following the end of the taxable year" and added the remainder of the subsection; in Subsection B, after "tax imposed on", added "residents and", after "Income Tax Act on or before the", deleted "thirtieth" and added "last", after "day of", deleted "fourth", and after "month", deleted "following the end of the taxable year" and added the remainder of the subsection.

Applicability. — Laws 2016, ch. 15, § 3 provided that the provisions of Laws 2016, ch. 15, §§ 1 and 2 apply to taxable years beginning on or after January 1, 2016.

The 2003 amendment, effective June 20, 2003, added the Subsection A designation; inserted "Except as provided in Subsection B of this section" preceding "the return required" in Subsection A; and added Subsection B.

The 1990 amendment, effective May 16, 1990, substituted "shall file" for "must file," "department" for "division" and "secretary" for "director" in the first sentence.

State returns used for audit although federal taxes filed on different basis. — When a taxpayer filed consolidated federal income tax returns for a three-year period but, for the same period, elected to file its state income tax returns as a separate corporate entity, excluding its subsidiaries, and since it was not obligated to file its state returns on the same basis as its federal returns, the revenue department was not required to audit and assess the taxpayer's income taxes on the basis of consolidated income reported by the taxpayer in its federal returns rather than on the basis of its state returns which it had filed. *Getty Oil Co. v. Taxation & Revenue Dep't*, 1979-NMCA-131, 93 N.M. 589, 603 P.2d 328 (decided prior to 1981 amendment).

New Mexico may not tax income and gross receipts of Indians residing on reservation when the income and gross receipts involved are derived solely from activities within the reservation. *Hunt v. O'Cheskey*, 1973-NMCA-026, 85 N.M. 381, 512 P.2d 954, cert. quashed, 85 N.M. 388, 512 P.2d 961.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 71 Am. Jur. 2d State and Local Taxation §§ 450, 481.

Duress in obtaining waiver from taxpayer extending time for assessment of income tax, 78 A.L.R. 631.

Liability on bond given as condition of extension of time for payment of income tax, 117 A.L.R. 452.

What constitutes "reasonable cause" under state statutes imposing penalty on taxpayer for failure to file timely tax return unless such failure was due to "reasonable cause," 29 A.L.R.4th 413.

85 C.J.S. Taxation §§ 1701 et seq.

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 [repealed] for income taxes paid another state.

History: 1978 Comp., § 7-2-12.1, enacted by Laws 1990, ch. 23, § 1.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law. Section 7-2-19 NMSA 1978, referred to in Paragraph B(2), was repealed by Laws 1990, ch. 49, § 19, effective May 16, 1990.

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 [Chapter 7, Article 3 NMSA 1978] or the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act [Chapter 7, Article 3A NMSA 1978] 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.

History: Laws 1996, ch. 17, § 1; 1997, ch. 63, § 1; 1999, ch. 47, § 2; 2003, ch. 275, § 3; 2010, ch. 53, § 1; 2011, ch. 116, § 1.

ANNOTATIONS

Cross references. — For the Internal Revenue Code, *see* Title 26 of the United States Code.

The 2011 amendment, effective July 1, 2011, in Subsection H, increased the threshold amount for imposition of a penalty for underpayment of estimated taxes.

Applicability. — Laws 2011, ch. 116, § 2 provided that the provisions of Laws 2011, ch. 116, § 1 shall apply to taxable years beginning on or after January 1, 2012.

The 2010 amendment, effective May 19, 2010, in Subsection F, in the first and fourth sentences, after "Withholding Tax Act", added "or the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act"; and added the last sentence; and in Subsection H(1)(b), after "Withholding Tax Act", added "or the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act".

Applicability. — Laws 2010, ch. 53, § 19 provided that the provisions of this act are applicable to taxable years beginning on or after January 1, 2011.

Temporary provisions. — Laws 2010 (2nd S.S.), ch. 7, § 12 provided that for the 2010 taxable year, a taxpayer is deemed to have complied with the provisions of Section 7-2-12.2 NMSA 1978 if the taxpayer has made the required annual payments of estimated taxes due for taxable year 2010 based on the definition of net income in Section 7-2-2 NMSA 1978 applicable prior to January 1, 2010.

The 2003 amendment, effective June 20, 2003, substituted "applicable credits and" for "credits provided by Sections 7-2-13 and 7-2-18.1 through and 7-2-18.4 NMSA 1978 and for any applicable tax" following "amount allowed for" in Paragraph B(2); in Paragraphs C(2) and (3), inserted "the taxpayer must pay", deleted "must be paid" preceding "on or before"; substituted "a" for "an amount as" preceding "penalty determined by"; substituted "on an" for "with respect to any" preceding "underpayment of the"; substituted "applies" for "shall be applied" near the beginning of Subsection J; and substituted "For a taxable year that ends" for "With respect to any taxable year ending" preceding "before the date" in Subsection L.

The 1999 amendment, effective June 18, 1999, added Subsection M.

The 1997 amendment, effective April 8, 1997, in Subsection A, added "through either withholding or estimated tax payments" and deleted the former last sentence relating to installment payments of 25% of annual payment; added the last sentence in Subsection C and added paragraphs C(1) to (3); in Subsection D, added the exception at the beginning and substituted "estimated payments of the required annual payment are due on or before" for "the due dates for the installments are"; added Subsection E and redesignated the following subsections accordingly; substituted "required annual payment" for "estimated tax" in Subsection G; substituted "annual payment" for "installment" and deleted "of the installment" before "paid" in Paragraph G(1); rewrote Paragraph G(3); added Paragraph H(3) and redesignated the following paragraph accordingly; inserted "and to taxpayers reporting on a fiscal year other than a calendar year" in Subsection J; and made stylistic changes throughout the section.

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.

History: 1953 Comp., § 72-15A-11, enacted by Laws 1965, ch. 202, § 11; 1970, ch. 34, § 1; 1973, ch. 133, § 1; 1974, ch. 56, § 2; 1981, ch. 37, § 23; 1990, ch. 49, § 7; 1992, ch. 78, § 1; 2013, ch. 179, § 1; 2023, ch. 159, § 2.

ANNOTATIONS

The 2023 amendment, effective June 16, 2023, provided that the credit allowed pursuant to this section shall be calculated without regard to the credit allowed pursuant to Section 7-3A-10 NMSA 1978; and added Subsection B.

Applicability. — Laws 2023, ch. 159, § 5 provided that the provisions of Laws 2023, ch. 159 apply to taxable years beginning on or after January 1, 2023.

The 2013 amendment, effective July 1, 2013, limited the tax credit paid to another state to the amount of tax liability in New Mexico; and in the second sentence, after "credit exceed", deleted "five and one-half percent" and added "the amount of the taxpayer's New Mexico income tax liability on that portion".

The 1992 amendment, effective May 20, 1992, added all of the present language of the first sentence beginning with "with respect to income"; and inserted "that is required to be either allocated or apportioned to New Mexico" in the second sentence.

The 1990 amendment, effective May 16, 1990, deleted the subsection designation "A" and "Except as provided otherwise in Subsection B of this section" at the beginning, inserted "as income allocated or apportioned to New Mexico pursuant to Section 7-2-11 NMSA 1978" and substituted "secretary" for "director" in the first sentence, rewrote the third sentence which read "This credit does not apply to or include income taxes paid to any municipality" and deleted former Subsection B which read "This credit does not apply during the first taxable year in which an individual incurs tax liability as a resident. Income of such an individual shall be allocated and apportioned in accordance with Section 7-2-11 NMSA 1978".

Am. Jur. 2d, A.L.R. and C.J.S. references. — 71 Am. Jur. 2d §§ 530 to 532, 549 to 551.

What constitutes doing business, business done, or the like, outside the state for purposes of allocation of income under tax laws, 167 A.L.R. 943.

Other state or country, credit for income tax paid to, construction and application of statutory provisions allowing, 12 A.L.R.2d 359.

84 C.J.S. Taxation §§ 60 to 68; 85 C.J.S. Taxation §§ 1738 to 1755.

7-2-14. Low-income comprehensive tax rebate.

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

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

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

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

Modified gross income is:		And the total number of exemptions is:					
	But Not						6 or
Over	Over	1	2	3	4	5	More
$ 0	$ 1,000	$ 195	$ 260	$ 325	$ 390	$ 455	$ 520
1,000	1,500	220	315	405	505	570	675
1,500	2,500	220	315	405	505	570	705

2,500	7,500	220	315	405	505	570	730
7,500	8,000	205	310	390	495	575	730
8,000	9,000	185	285	375	480	575	700
9,000	10,000	170	250	340	425	510	665
10,000	11,500	145	210	275	360	445	600
11,500	13,000	130	185	235	295	365	480
13,000	14,500	115	170	220	275	315	390
14,500	16,500	105	155	185	235	285	335
16,500	18,000	100	130	165	210	250	300
18,000	19,500	90	115	145	180	220	260
19,500	21,000	80	105	140	165	185	230
21,000	23,000	80	105	140	165	185	230
23,000	24,500	75	100	120	145	170	195
24,500	26,000	65	90	115	140	155	180
26,000	27,500	55	80	105	130	140	170
27,500	29,500	50	75	100	115	130	155
29,500	31,000	40	55	80	100	115	130
31,000	32,500	35	50	65	80	100	105
32,500	34,000	25	40	50	65	80	90
34,000	36,000	15	35	40	55	65	75.

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

F. For the 2022 taxable year and each subsequent taxable year, the amount of rebate shown in the table in Subsection D of this section shall be adjusted to account for inflation. The department shall make the adjustment by multiplying each amount of rebate by a fraction, the numerator of which is the consumer price index ending during

the prior taxable year and the denominator of which is the consumer price index ending in tax year 2021. The result of the multiplication shall be rounded down to the nearest one dollar ($1.00), except that if the result would be an amount less than the corresponding amount for the preceding taxable year, then no adjustment shall be made.

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

H. For purposes of this section:

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

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

History: 1953 Comp., § 72-15A-11.1, enacted by Laws 1972, ch. 20, § 2; 1973, ch. 336, § 1; 1974, ch. 17, § 1; 1975, ch. 213, § 1; 1977, ch. 197, § 1; 1978, ch. 145, § 1; 1981, ch. 37, § 24; 1986, ch. 20, § 29; 1986 (3d S.S.), ch. 1, § 1; 1987, ch. 264, § 7; 1990, ch. 49, § 8; 1992, ch. 78, § 2; 1994, ch. 5, § 21; 1998, ch. 99, § 2; 2021, ch. 116, § 1.

ANNOTATIONS

Cross references. — For Section 152 of the Internal Revenue Code, *see* 26 U.S.C.S. § 1152.

The 2021 amendment, effective June 18, 2021, increased and indexed the low-income comprehensive tax rebate, and defined "consumer price index" for purposes of this section; in Subsection D, added "Except as provided in Subsection F of this section", and completely rewrote the tax rebate table; in Subsection E, after "number of exemptions", added "as adjusted by the provisions of Subsection F of this section."; added a new Subsection F and redesignated former Subsections F and G as Subsections G and H, respectively; and in Subsection H, added Paragraph H(1) and added new paragraph designation "(2)".

Applicability. — Laws 2021, ch. 116, § 4 provided that the provisions of Laws 2021, ch. 116, §§ 1 and 2 apply to taxable years beginning on or after January 1, 2021.

The 1998 amendment, rewrote the tax rebate table in Subsection D. Laws 1998, ch. 99, contains no effective date provision, but pursuant to N.M. Const., art. IV, § 23, is effective May 20, 1998, 90 days after adjournment of the legislature.

The 1994 amendment, effective May 18, 1994, deleted "tax rebates for food and medical expenses" at the end of the section heading, and substituted the table in Subsection D for the former table.

The 1992 amendment, effective May 20, 1992, added present Subsection E; redesignated former Subsections E and F as present Subsections F and G; and inserted "of 1986" near the beginning of Subsection G.

The 1990 amendment, effective May 16, 1990, added the language beginning "plus one exemption for each minor child" at the end of Subsection C and added Subsection F.

Law reviews. — For article, "An Intergovernmental Approach to Tax Reform," see 4 N.M.L. Rev. 189 (1974).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 71 Am. Jur. 2d State and Local Taxation §§ 549 to 551.

84 C.J.S. Taxation §§ 60 to 68; 85 C.J.S. Taxation §§ 1738 to 1755.

7-2-14.1. Repealed.

ANNOTATIONS

Repeals. — Laws 1993, ch. 356, § 1 repealed 7-2-14.1 NMSA 1978, as enacted by Laws 1987, ch. 264 § 8, relating to a tax rebate for gross receipts tax on food and medical expenses, effective July 1, 1993. For provisions of former section, *see* the 1992 NMSA 1978 on *NMOneSource.com.*

7-2-14.2. Repealed.

ANNOTATIONS

Repeals. — Laws 1987, ch. 264, § 25B repealed 7-2-14.2 NMSA 1978, as enacted by Laws 1979, ch. 70, § 2, relating to withholding instructions, effective June 19, 1987.

7-2-14.3. Tax rebate of part of property tax due from low-income taxpayer; local option; refund.

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

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

(2) is not a dependent of another individual;

(3) files a return; and

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

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

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

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

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

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

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

LOW-INCOME TAXPAYER'S PROPERTY TAX REBATE TABLE

Taxpayer's Modified Gross Income		Property Tax Rebate
Over	But Not Over	
$0	$8,000	75% of property tax liability
8,000	10,000	70% of property tax liability
10,000	12,000	65% of property tax liability

12,000	14,000	60% of property tax liability
14,000	16,000	55% of property tax liability
16,000	18,000	50% of property tax liability
18,000	20,000	45% of property tax liability
20,000	22,000	40% of property tax liability
22,000	24,000	35% of property tax liability.

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

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

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

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

I. No later than December 31 of the year immediately following the first year in which the low-income taxpayer property tax rebate provided in the Income Tax Act is in effect for a county, and no later than December 31 of each year thereafter in which the

tax rebate is in effect, the department shall certify to the county the amount of the loss of income tax revenue to the state for the previous taxable year attributable to the allowance of property tax rebates to taxpayers of that county. The county shall promptly pay the amount certified to the department. If a county fails to pay the amount certified within thirty days of the date of certification, the department may enforce collection of the amount by action against the county and may withhold from any revenue distribution to the county, not dedicated or pledged, amounts up to the amount certified.

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

History: Laws 1994, ch. 111, § 1; 1997, ch. 196, § 1; 2003, ch. 275, § 4.

ANNOTATIONS

The 2003 amendment, effective June 20, 2003, substituted "taxable years" for "first taxable year" following "shall specify the" in Subsection H; substituted "December 31" for "July 1" twice in the first sentence of Subsection I.

The 1997 amendment, effective June 20, 1997, revised the table in Subsection D to add the last four income ranges; and in Subsection E, in the second sentence, substituted "three hundred fifty dollars ($350)" for "two hundred fifty dollars ($250)", substituted "one hundred seventy-five dollars ($175)" for "one hundred twenty-five dollars ($125)", and in the third sentence substituted "twenty-four thousand dollars ($24,000)" for "sixteen thousand dollars ($16,000)".

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 [Chapter 1 NMSA 1978].

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 [Chapter 7, Articles 35 through 38 NMSA 1978]; 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 [Chapter 7, Article 32 NMSA 1978]; the assessed value of equipment in the county as determined under the Oil and Gas Production Equipment Ad Valorem Tax Act [Chapter 7, Article 34 NMSA 1978]; and the taxable value of copper mineral property in the county pursuant to Section 7-39-7 NMSA 1978.

History: Laws 1994, ch. 111, § 2; 2000, ch. 33, § 1.

ANNOTATIONS

The 2000 amendment, effective May 17, 2000, deleted former Subsection A(2), concerning counties that had not adopted an ordinance imposing a transfer tax, and deleted the designation from former Subsection A(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.

History: Laws 1994, ch. 111, § 3.

ANNOTATIONS

Effective dates. — Laws 1994, ch. 111, § 6 made Laws 1994, ch. 111, § 3 effective on July 1, 1994.

7-2-15. Repealed.

ANNOTATIONS

Repeals. — Laws 1987, ch. 264, § 25B repealed 7-2-15 NMSA 1978, as enacted by Laws 1975, ch. 207, § 1, relating to rebate for gross receipts tax on medical and dental expenses, effective June 19, 1987.

7-2-16. Repealed.

ANNOTATIONS

Repeals. — Laws 1990, ch. 49, § 20 repealed 7-2-16 NMSA 1978, as enacted by Laws 1986, ch. 110, § 1, relating to credits for solar or wind energy equipment installation effective May 16, 1990. For provisions of former section, *see* the 1989 NMSA 1978 on *NMOneSource.com.*

7-2-16.1. Repealed.

ANNOTATIONS

Repeals. — Laws 1990, ch. 49, § 20 repealed 7-2-16.1 NMSA 1978, as enacted by Laws 1981, ch. 180, § 2, relating to credits for solar capital investments, effective May 16, 1990. For provisions of former section, *see* the 1989 NMSA 1978 on *NMOneSource.com.*

7-2-17. Repealed.

ANNOTATIONS

Repeals. — Laws 1990, ch. 49, § 20 repealed 7-2-17 NMSA 1978, as enacted by Laws 1977, ch. 114, § 1, relating to credits for solar or wind energy equipment installation, effective May 16, 1990. For provisions of former section, *see* the 1989 NMSA 1978 on *NMOneSource.com.*

7-2-17.1. Repealed.

ANNOTATIONS

Repeals. — Laws 1990, ch. 49, § 21 repealed 7-2-17.1 NMSA 1978, as enacted by Laws 1983, ch. 212, § 1, relating to tax credits for geothermal capital investments, effective January 1, 1991. For provisions of former section, *see* the 1989 NMSA 1978 on *NMOneSource.com.*

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

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

G. For taxpayers whose principal place of residence is in a county that has in effect for the taxable year a resolution in accordance with Subsection J of this section, the tax

rebate provided for in this section may be claimed in the amount of the property tax due each taxable year that exceeds the amount shown as property tax liability in the following table:

ELDERLY HOMEOWNERS' MAXIMUM PROPERTY TAX LIABILITY TABLE

Taxpayers' Modified Gross Income		Property Tax Liability
Over	But Not Over	
$ 0	$ 1,000	$ 20
1,000	2,000	25
2,000	3,000	30
3,000	4,000	35
4,000	5,000	40
5,000	6,000	45
6,000	7,000	50
7,000	8,000	55
8,000	9,000	60
9,000	10,000	75
10,000	11,000	90
11,000	12,000	105
12,000	13,000	120
13,000	14,000	135
14,000	15,000	150
15,000	16,000	165
16,000	17,000	180
17,000	18,000	195
18,000	19,000	210
19,000	20,000	225
20,000	21,000	240
21,000	22,000	255
22,000	23,000	270
23,000	24,000	285
24,000	25,000	300.

H. If a taxpayer's modified gross income is zero, the taxpayer may claim a tax rebate based upon the amount shown in the first row of the appropriate table. The tax rebate provided for in this section shall not exceed two hundred fifty dollars ($250) per return, and, if a return is filed separately that could have been filed jointly, the tax rebate shall not exceed one hundred twenty-five dollars ($125). No tax rebate shall be allowed

any taxpayer whose modified gross income exceeds sixteen thousand dollars ($16,000) for taxpayers whose principal place of residence is in a county that does not have in effect for the taxable year a resolution in accordance with Subsection J of this section and twenty-five thousand dollars ($25,000) for all other taxpayers.

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

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

History: 1953 Comp., § 72-15A-11.4, enacted by Laws 1977, ch. 196, § 1; 1981, ch. 37, § 28; 1993, ch. 307, § 2; 1997, ch. 117, § 1; 1999, ch. 47, § 3; 2003, ch. 275, § 5.

ANNOTATIONS

Cross references. — For meaning of "modified gross income", *see* 7-2-2 NMSA 1978.

Compiler's notes. — Laws 1977, ch. 196, designated the above section as 72-15A-11.4, 1953 Comp. Since Laws 1977, ch. 114, had previously enacted a section designated as 72-15A-11.4, 1953 Comp., then compiled as 7-2-17 NMSA 1978, the above section was designated as 72-15A-11.5, 1953 Comp., by the compiler.

The 2003 amendment, effective June 20, 2003, inserted "and shall specify the period of time for which the rebate provided by this section may be claimed by qualified taxpayers" following "more taxable years" in Subsection J.

The 1999 amendment, effective June 18, 1999, added additional amounts to the table in Subsection F.

The 1997 amendment made stylistic changes throughout the section, redesignated Subsection H as Subsection I, and added Subsections G, H, and J. Laws 1997, ch. 117

contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 20, 1997, 90 days after adjournment of the legislature.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 71 Am. Jur. 2d State and Local Taxation §§ 518, 545, 549, 551.

85 C.J.S. Taxation §§ 1715 to 1755.

7-2-18.1. Credit for expenses for dependent child day care necessary to enable gainful employment to prevent indigency.

History: Laws 2004, ch. 99, § 1; repealed by Laws 2005, ch. 91, § 2.

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 [Chapter 27, Article 2B NMSA 1978] 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.

History: Laws 1981, ch. 170, § 1; 1990, ch. 49, § 10; 1995, ch. 11, § 4; 1999, ch. 47, § 4; 2015, ch. 116, § 1.

ANNOTATIONS

Cross references. — For Section 152 of the Internal Revenue Code, *see* 26 U.S.C. § 152.

The 2015 amendment, effective June 19, 2015, amended the definition of "disabled person" in the Income Tax Act to allow certain health care professions other than licensed physicians who may determine physical or mental impairment; in Paragraph (1) of Subsection A, after "compensation from", deleted "the" and added "a"; in Paragraph (4) of Subsection A, after "certified by a licensed physician", added "or an advanced practice registered nurse, certified nurse-midwife or physician assistant working within that person’s scope of practice"; and in Paragraph (3) of Subsection B, after "together with", deleted "his" and added "the resident’s".

Temporary provisions. — Laws 2015, ch. 116, § 16 provided that by January 1, 2016, every cabinet secretary, agency head and head of a political subdivision of the state shall update rules requiring an examination by, a certificate from or a statement of a licensed physician to also accept such examination, certificate or statement from an advanced practice registered nurse, certified nurse-midwife or physician assistant working within that person's scope of practice.

The 1999 amendment, effective June 18, 1999, inserted "a program under the New Mexico Works Act or any successor program" in Paragraph B(4).

The 1995 amendment, effective June 16, 1995, in Subsection E, substituted "federal credit for filed and dependent care expenses" for "federal child care credit", added the proviso at the end, and made stylistic changes.

The 1990 amendment, effective May 16, 1990, in Subsection A, substituted "dependent of the resident" for "dependent for whom the resident or his spouse would be eligible for an exemption for federal income tax purposes" at the end of Paragraph (1), added Paragraph (3), and redesignated former Paragraphs (3) to (5) as Paragraphs (4) to (6).

7-2-18.2. Credit for preservation of cultural property; refund.

History: Laws 2007, ch. 204, § 5; repealed by Laws 2007, ch. 204, § 20.

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 [15-5A-1 to 15-5A-7 NMSA 1978], 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.

History: 1978 Comp., § 7-2-18.2, enacted by Laws 1984, ch. 34, § 1; 2007, ch. 160, § 14.

ANNOTATIONS

The 2007 amendment, effective July 1, 2007, added Paragraph (2) of Subsection A and set limitations on the amount of the tax credit.

Applicability. — Laws 2007, ch. 160, § 16 provided that Laws 2007, ch. 160 applied to taxable years beginning on or after January 1, 2009.

7-2-18.3. Repealed.

ANNOTATIONS

Repeals. — Laws 1998, ch. 95, § 5, effective January 1, 1998, and Laws 1998, ch. 99, § 3, effective May 20, 1998, both repealed 7-2-18.3 NMSA 1978, as enacted by Laws 1994, ch. 5, § 17. relating to credit for prescription drugs effective for taxable years beginning on or after January 1, 1999. For provisions of former section, *see* the 1997 NMSA 1978 on *NMOneSource.com*. The section was set out as repealed by Laws 1998, ch. 99, § 3. *See* 12-1-8 NMSA 1978.

7-2-18.4. Repealed.

History: Laws 1994, ch. 115, § 1; repealed by Laws 2023, ch. 85, § 28.

ANNOTATIONS

Repeals. — Laws 2023, ch. 85, § 28 repealed 7-2-18.4 NMSA 1978, as enacted by Laws 1994, ch. 115, § 1, relating to qualified business facility rehabilitation credit, income tax credit, effective July 1, 2023. For provisions of former section, *see* the 2022 NMSA 1978 on *NMOneSource.com*.

7-2-18.5. Repealed.

History: Laws 1998, ch. 97, § 2; repealed by Laws 2023, ch. 85, § 28.

ANNOTATIONS

Repeals. — Laws 2023, ch. 85, § 28 repealed 7-2-18.5 NMSA 1978, as enacted by Laws 1998, ch. 97, § 2, relating to welfare-to-work tax credit, effective July 1, 2023. For provisions of former section, *see* the 2022 NMSA 1978 on *NMOneSource.com*.

7-2-18.6. Repealed.

ANNOTATIONS

Repeals. — Laws 1999, ch. 217, § 4 repealed 7-2-18.6, as enacted by Laws 1999, ch. 217, § 1, relating to a job mentorship tax credit, effective January 1, 2002. For provisions of former section, *see* the 1998 NMSA 1978 on *NMOneSource.com.*

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.

History: Laws 2000, ch. 64, § 1 and Laws 2000, ch. 78, § 1.

ANNOTATIONS

Effective dates. — Laws 2000, ch. 78 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective on May 17, 2000, 90 days after adjournment of the legislature.

Compiler's notes. — Laws 2000, ch. 64, § 1 and Laws 2000, ch. 78, § 1, both effective May 17, 2000, enacted identical sections. The section was set out as enacted by Laws 2000, ch. 78, § 1. *See* 12-1-8 NMSA 1978.

7-2-18.8. Repealed.

History: Laws 2001, ch. 73, § 1; repealed by Laws 2023, ch. 85, § 28.

ANNOTATIONS

Repeals. — Laws 2023, ch. 85, § 28 repealed 7-2-18.8 NMSA 1978, as enacted by Laws 2001, ch. 73, § 1, relating to credit, certain electronic equipment, effective July 1,

2023. For provisions of former section, *see* the 2022 NMSA 1978 on *NMOneSource.com*.

7-2-18.9. Repealed.

History: Laws 2002, ch. 91, § 1.

ANNOTATIONS

Repeals. — Laws 2002, ch. 91, § 3 repealed 7-2-18.9 NMSA 1978, as enacted by Laws 2002, ch. 91, § 1, relating to the solar market development tax credit, effective January 1, 2006. For provisions of former section, *see* the 2001 NMSA 1978 on *NMOneSource.com.*

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 [47-12-1 to 47-12-6 NMSA 1978] 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 [75-9-1 to 75-9-6 NMSA 1978].

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.

History: 1978 Comp., § 7-2-18.10, enacted by Laws 2003, ch. 331, § 7; 2007, ch. 335, § 1.

ANNOTATIONS

Cross references. — For Internal Revenue Code §§ 501 (c)(3) and 170(h), *see* 26 U.S.C. § 501 (c)(3) and 26 U.S.C. § 170(h).

For the Land Conservation Incentives Act, *see* 75-9-1 to 75-9-6 NMSA 1978.

The 2007 amendment, effective June 15, 2007, provided that the credit shall not exceed $100,000 for a conveyance prior to January 1, 2008 and $250,000 on or after January 1, 2008 and added Subsections F through K.

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 [Chapter 7, Article 2A NMSA 1978].

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.

History: Laws 2003, ch. 400, § 1.

ANNOTATIONS

Effective dates. — Laws 2003, ch. 400 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 20, 2003, 90 days after adjournment of the legislature.

7-2-18.12. Repealed.

ANNOTATIONS

Repeals. — Laws 2005, ch. 91, § 2 repealed 7-2-18.12 NMSA 1978, as enacted by Laws 2004, ch. 99, § 1, relating to income tax credit for payments to care facilities, effective June 17, 2005. For provisions of former section, *see* the 2004 NMSA 1978 on *NMOneSource.com.*

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.

History: Laws 2005, ch. 267, § 1.

ANNOTATIONS

Effective dates. — Laws 2005, ch. 267 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 17, 2005, 90 days after adjournment of the legislature.

Applicability. — Laws 2005, ch. 267, § 2 provided that Laws 2005, ch. 267, § 1 apply to taxable years beginning on or after January 1, 2005.

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.

History: Laws 2006, ch. 93, § 1; 2009, ch. 280, § 1.

ANNOTATIONS

The 2009 amendment, effective June 19, 2009, in Subsection A, changed the reference from Subsection B to Subsection C; changed "December 31, 2015" to "December 31, 2016"; after "credit up to", changed "thirty percent" to "ten percent"; and

after "costs of the system", deleted the remainder of the sentence and the former last sentence, which provided that the combined federal and state tax credits shall not exceed thirty percent of the cost of the system and which provided the method to determine the amount of the state tax credit.

Applicability. — Laws 2009, ch. 280, § 2 provided that the provisions of Laws 2009, ch. 280, § 1 apply to taxable years beginning on or after January 1, 2009.

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.

History: Laws 2007, ch. 45, § 9; 2008 (2nd S.S.), ch. 4, § 1; 2019, ch. 270, § 13; 2021, ch. 116, § 2.

ANNOTATIONS

Cross references. — For Section 32 of the Internal Revenue Code, *see* 26 U.S.C § 32.

The 2021 amendment, effective June 18, 2021, increased the amount of the working families tax credit, and expanded the credit to certain residents who are ineligible for the federal earned income tax credit; in Subsection A, after "A", added "taxpayer who is a", after "credit in an amount equal to", changed "seventeen" to "twenty", after "percent", added "for taxable years beginning on or after January 1, 2021, and twenty-five percent for taxable years beginning on or after January 1, 2023", after "federal", added "earned", and after "same taxable year", deleted "pursuant to Section 32 of the Internal Revenue Code" and added "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"; added a new Subsection B and added subsection designation "C" and redesignated former Subsection B as Subsection D; and added Subsection E.

Applicability. — Laws 2021, ch. 116, § 4 provided that the provisions of Laws 2021, ch. 116, §§ 1 and 2 apply to taxable years beginning on or after January 1, 2021.

The 2019 amendment, effective June 14, 2019, increased the amount of the working families tax credit; and in Subsection A, after "amount equal to", deleted "ten" and added "seventeen".

Applicability. — Laws 2019, ch. 270, § 59 provided that the provisions of Laws 2019, ch. 270, § 13 apply to taxable years beginning on or after January 1, 2019.

The 2008 amendment, effective November 17, 2008, increased the working families tax credit from eight to ten percent of the federal income tax credit.

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 [Chapter 32A, Article 5 NMSA 1978]; 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.

History: Laws 2007, ch. 45, § 10.

ANNOTATIONS

Effective dates. — Laws 2007, ch. 45, § 10, contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 15, 2007, 90 days after the adjournment of the legislature.

Applicability. — Laws 2007, ch. 45, § 15 provided that Laws 2007, ch. 45, §10 apply to taxable years beginning on or after January 1, 2007.

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; or

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

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

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

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

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

(d) has not issued securities registered pursuant to Section 6 of the federal Securities Act of 1933, as amended; has not issued securities traded on a national

securities exchange; is not subject to reporting requirements of the federal Securities Exchange Act of 1934, as amended; and is not registered pursuant to the federal Investment Company Act of 1940, as amended, at the time of the investment;

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

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

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

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

History: Laws 2007, ch. 172, § 1; 2012, ch. 38, § 1; 2015 (1st S.S.), ch. 2, § 2; 2020, ch. 28, § 1.

ANNOTATIONS

Repeals. — Laws 2012, ch. 38, § 2 repealed Laws 2007, ch. 172, § 24, which provided for the repeal of the angel investment credit on January 1, 2013.

Compiler's notes. — Laws 2007, ch. 172, § 23, effective April 2, 2007, provided that in taxable years 2013 through 2015 a taxpayer may carry forward amounts resulting from angel investment credits claimed and approved for qualified investments made in calendar year 2009, 2010 or 2011.

Cross references. — For Section 6 of the federal Securities Act of 1933, *see* 15 U.S.C. § 77f.

For the federal Securities Exchange Act of 1934, *see* 15 U.S.C. § 78a et seq.

For the federal Investment Company Act of 1940, *see* 15 U.S.C. § 80a-1 et seq.

For Section 41 of the Internal Revenue Code of 1986, *see* 26 U.S.C.S. § 41.

The 2020 amendment, effective May 20, 2020, transferred review and approval of angel investment credits from the economic development department to the taxation and revenue department, and required application materials for the tax credit to continue to be sent to the economic development department; in Subsection A, after "qualified investment may", added "apply for, and the department may allow, a", and

after "claim", added "for"; in Subsection B, added new paragraph designations "(1)" and "(2)"; deleted subsection designation "C" and, from former Subsection C, the language "A taxpayer may claim the angel investment credit no later than one year following the end of the calendar year in which the qualified investment was made; provided that a claim for the credit may not be made or allowed with respect to any" and added "and", added new paragraph designation "(3)", and in Paragraph B(3), added "for a qualified", and after "investment made", deleted "after" and added "on or before"; deleted former Subsections D and E and added new Subsections C through F, and redesignated former Subsection F as Subsection G; in Subsection G, after the first occurrence of "The", deleted "economic development" and added "taxation and revenue", after "annually to the", added "revenue stabilization and tax policy committee and the", after "accredited investors", deleted "to whom certificates of eligibility were issued by the economic development department" and added "determined to be eligible for the credit", after "names of the businesses", deleted "that the economic development department had", and deleted "The report shall also include an evaluation of the success of the angel investment credit as an incubator of new businesses in New Mexico and the continued viability and operation in New Mexico of businesses in which investments eligible for the angel investment credit have been made."; and deleted former Subsection G.

Applicability. — Laws 2020, ch. 28, § 2 provided that the provisions of Laws 2020, ch. 28, § 1 apply to applications for an angel investment credit for qualified investments made on or after January 1, 2019.

The 2015 (1st S.S.) amendment, effective September 6, 2015, increased the maximum amount of an angel investment credit, changed the number of angel investment credits a taxpayer may claim, extended the angel investment credit until the year 2025, and limited the total amount of angel investment credits that may be approved by the economic development department; in Subsection A, after "not to exceed twenty-five percent of", deleted "not more than one hundred thousand dollars ($100,000) of", after "the qualified investment;", added "provided that a credit for each qualified investment shall not exceed sixty-two thousand five hundred dollars ($62,500)"; in Subsection B, after "for not more than", deleted "two" and added "one", after "qualified", deleted "investments in a taxable year; provided that each investment is in a different qualified business" and added "investment per investment round", after "qualified investments", deleted "made in the same qualified business or successor of that business for not more than three taxable years. The angel investment credit shall not exceed twenty-five thousand dollars ($25,000) for each qualified investment by the taxpayer" and added "in no more than five qualified businesses per taxable year"; in Subsection C, deleted "2016" and added "2025"; in Subsection D, added "Completed" preceding "applications shall be considered"; in Subsection E, after "in any calendar year will not exceed", deleted "seven hundred fifty thousand dollars ($750,000)" and added "two million dollars ($2,000,000)", after "in the order that", deleted "the" and added "completed"; in Subsection F, after "certificates of eligibility were issued by the", added "economic development", and after "the businesses that the", added "economic development"; in Subsection H, after "the taxpayer’s interest in the partnership or business association.",

deleted "The total credit claimed in the aggregate by all members of the partnership or business association in a taxable year with respect to a qualified investment shall not exceed twenty-five thousand dollars ($25,000)"; in Subsection J, after "may be carried forward for", deleted "three" and added "five"; in Subsection K, deleted former Paragraph (4) and added a new Paragraph (4); in Subparagraph K(6)(a), after "principal place of business", added "and employs a majority of its full-time employees, if any", and after "New Mexico", added "and a majority of its tangible assets, if any, are located in New Mexico"; in Subparagraph K(6)(b), after "engages in", deleted "high-technology" and added "qualified"; in Subparagraph K(6)(e), after "full-time-equivalent basis", deleted "at the time of the investment" and added "in the taxable year in which the investment was made"; and added Paragraph (8) of Subsection K.

Applicability. — Laws 2015 (1st S.S.), ch. 2, § 25 provided that the provisions of Laws 2015 (1st S.S.), ch. 2, §§ 2 through 7 and 17 apply to taxable years beginning on or after January 1, 2015.

The 2012 amendment, effective May 16, 2012, extended the angel investment credit for five years, and in Subsection C, after “December 31”, changed "2011" to "2016".

7-2-18.18. Renewable energy production tax credit.

A. The tax credit provided in this section may be referred to as the "renewable energy production tax credit". The tax credit provided in this section may not be claimed with respect to the same electricity production for which a tax credit pursuant to Section 7-2A-19 NMSA 1978 has been claimed.

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

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

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

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

D. The amount of the tax credit for electricity produced by a qualified energy generator in the taxable year using a solar-light-derived or solar-heat-derived qualified energy resource shall be at the amounts specified in Paragraphs (1) through (11) of this subsection; provided that the total amount of tax credits claimed by all taxpayers in a taxable year for a single qualified energy generator using a solar-light-derived or solar-heat-derived qualified energy resource shall be limited to the first two hundred thousand megawatt-hours of electricity produced by the qualified energy generator in the taxable year:

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

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

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

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

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

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

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

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

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

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

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

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

F. As used in this section:

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

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

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

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

(d) solid woody waste materials, including landscape or right-of-way tree trimmings, rangeland maintenance residues, waste pallets, crates and manufacturing, construction and demolition wood wastes, excluding pressure-treated, chemically treated or painted wood wastes and wood contaminated with plastic;

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

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

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

(2) "qualified energy generator" means an electric generating facility with at least one megawatt generating capacity located in New Mexico that produces electricity

using a qualified energy resource and the electricity produced is sold to an unrelated person; and

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

(a) solar light;

(b) solar heat;

(c) wind; or

(d) biomass.

G. A person that holds title to a facility generating electricity from a qualified energy resource or a person that leases such a facility from a county or municipality pursuant to an industrial revenue bond may request certification of eligibility for the renewable energy production tax credit from the energy, minerals and natural resources department, which shall determine if the facility is a qualified energy generator. The energy, minerals and natural resources department may certify the eligibility of an energy generator only if the total amount of electricity that may be produced annually by all qualified energy generators that are certified pursuant to this section and pursuant to Section 7-2A-19 NMSA 1978 will not exceed a total of two million megawatt-hours plus an additional five hundred thousand megawatt-hours produced by qualified energy generators using a solar-light-derived or solar-heat-derived qualified energy resource. Applications shall be considered in the order received. The energy, minerals and natural resources department may estimate the annual power-generating potential of a generating facility for the purposes of this section. The energy, minerals and natural resources department shall issue a certificate to the applicant stating whether the facility is an eligible qualified energy generator and the estimated annual production potential of the generating facility, which shall be the limit of that facility's energy production eligible for the tax credit for the taxable year. The energy, minerals and natural resources department may issue rules governing the procedure for administering the provisions of this subsection and shall report annually to the appropriate interim legislative committee information that will allow the legislative committee to analyze the effectiveness of the renewable energy production tax credit, including the identity of qualified energy generators, the energy production means used, the amount of energy produced by those qualified energy generators and whether any applications could not be approved due to program limits.

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

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

(2) the business entity:

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

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

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

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

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

(5) the energy, minerals and natural resources department certifies the allocation for the taxable year to be claimed in writing to the taxpayer.

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

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

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

L. If the requirements of this section have been complied with, the department shall approve payment of the renewable energy production tax credit. The credit may be

deducted from a taxpayer's New Mexico income tax liability for the taxable year for which the credit is claimed. If the amount of tax credit exceeds the taxpayer's income tax liability for the taxable year:

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

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

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

History: Laws 2007, ch. 204, § 2; 2021, ch. 65, § 6.

ANNOTATIONS

The 2021 amendment, effective July 1, 2021, provided that the amount of the renewable energy production tax credit in the eleventh taxable year in which the qualified energy generator produces electricity is one and one-half cents per kilowatt-hour, clarified that a taxpayer eligible for a renewable energy production tax credit shall be eligible for one hundred twenty consecutive months, and revised the definition of "qualified energy generator", as used in this section; in Subsection D, after "Paragraphs (1) through", changed "(10)" to "(11)", and added Paragraph D(11); in Subsection E, after "tax credit for", changed "ten" to "one hundred twenty", and after "consecutive", changed "years" to "months"; in Subsection F, Paragraph F(2), after "means", deleted "a" and added "an electric generating"; and in Subsection H, Paragraph H(4), after the second occurrence of "department", added "for the taxable year to be claimed", and in Paragraph H(5), after "allocation", added "for the taxable year to be claimed".

7-2-18.19. 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 [Chapter 7, Article 2A NMSA 1978] 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:

LEED Rating Level	Qualified Occupied Square Footage	Tax Credit per Square Foot
LEED-NC Silver	First 10,000	$3.50
	Next 40,000	$1.75
	Over 50,000 up to 500,000	$.70
LEED-NC Gold	First 10,000	$4.75
	Next 40,000	$2.00
	Over 50,000 up to 500,000	$1.00
LEED-NC Platinum	First 10,000	$6.25
	Next 40,000	$3.25
	Over 50,000 up to 500,000	$2.00
LEED-EB or CS Silver	First 10,000	$2.50
	Next 40,000	$1.25
	Over 50,000 up to 500,000	$.50
LEED-EB or CS Gold	First 10,000	$3.35
	Next 40,000	$1.40
	Over 50,000 up to 500,000	$.70

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

E. For taxable years ending on or before December 31, 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:

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

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 [Chapter 60, Article 14 NMSA 1978] and rules adopted pursuant to that act relating to permanent foundations;

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

(a) the United States green building council for those buildings obtaining LEED certification;

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

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

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

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

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

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

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

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

(16) "sustainable residential building" means:

(a) a building used as a single-family residence as registered and certified under the build green New Mexico or LEED-H rating 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

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

History: Laws 2007, ch. 204, § 3; 2009, ch. 59, § 1; 2013, ch. 92, § 1.

ANNOTATIONS

The 2013 amendment, effective January 1, 2014, extended the sustainable building tax credit for three years; decreased the maximum aggregate calendar year amount of sustainable building tax credit for which a certificate of eligibility may be issued; changed provisions for application of the tax credit; added Subsection B; in Subsection D, in the first sentence, at the beginning of the sentence, deleted "The amount of" and added "For taxable years ending on or before December 31, 2016"; in Subsection E, in the first sentence, deleted "The amount of" and added "For taxable years ending on or before December 31, 2016"; in Subsection G, in the first sentence, after "any calendar year an aggregate amount of", deleted "five million dollars ($5,000,000)" and added "one million dollars ($1,000,000)" and after "commercial buildings and an aggregate amount of", deleted "five million dollars ($5,000,000)" and added "four million dollars ($4,000,000)" and in the second sentence, after "sustainable commercial buildings to", deleted "building" and after "commercial buildings to owners of", deleted "multifamily dwelling units" and added "sustainable residential buildings"; deleted former Subsection J, which provided for the application of the sustainable building tax credit over a period of four to seven years; deleted former Subsection K, which provided for the application of the sustainable building tax credit of less than twenty five in a single taxable year; added Subsections K, L and O; in Paragraph (15) of Subsection P, added the language between "means" and "a building that has been registered"; and deleted former

Subparagraph (b) of Paragraph 16 of Subsection P, which was the same language that was added to the definition of "sustainable commercial building" in Paragraph (15) of Subsection P.

Applicability. — Laws 2013, ch. 92, § 3 amended Laws 2007, ch. 204, § 21 providing that Laws 2007, ch. 204, § 3 applies to taxable years beginning on or after January 1, 2008.

The 2009 amendment, effective June 19, 2009, in Subsection A, at the end of the second sentence, added the provision concerning manufactured housing; in Subsection B, deleted former Paragraphs (1) and (2), which required the taxpayer to be owner of the building at the time the building was certified or the subsequent purchaser of a sustainable building with respect to which no tax credit had been claimed and adds the provision requiring the taxpayer to submit a document pursuant to Subsection I with the taxpayer's income tax return; in Subsection D, deleted the provision which required the tax credit to be calculated based on the certification level the building had achieved in the LEED rating system or the New Mexico rating system and in the chart, added the Build Green NM Silver, Gold and Emerald levels; in Subsection E, added the last sentence, together with Paragraphs (1) and (2); in Subsection F, added the last sentence; in Subsection I, permits the document to be submitted with the taxpayer's income tax return; added Paragraphs (11), (13) and (17) of Subsection N; in Subparagraph (b) of Paragraph (16) of Subsection N, added the build green New Mexico rating system; and in Subparagraph (c) of Paragraph (16) of Subsection N, deleted the requirement that manufactured housing be as defined by the United States department of housing and urban development.

7-2-18.20. Repealed.

ANNOTATIONS

Repeals. — Laws 2007, ch. 204, § 20 repealed 7-2-18.20 NMSA 1978, as enacted by Laws 2007, ch. 204, § 5, relating to a tax credit for agricultural water conservation expenses, effective January 1, 2013. For provisions of former section, *see* the 2012 NMSA 1978 on *NMOneSource.com.*

7-2-18.21. Repealed.

History: Laws 2007, ch. 204, § 7; repealed by Laws 2023, ch. 85, § 28.

ANNOTATIONS

Repeals. — Laws 2023, ch. 85, § 28 repealed 7-2-18.21 NMSA 1978, as enacted by Laws 2007, ch. 204, § 7, relating to credit, blended biodiesel fuel, effective July 1, 2023. For provisions of former section, *see* the 2022 NMSA 1978 on *NMOneSource.com*.

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 [Chapter 61, Article 5A NMSA 1978];

(c) an optometrist licensed pursuant to the provisions of the Optometry Act [Chapter 61, Article 2 NMSA 1978];

(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 [repealed];

(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 [Chapter 61, Article 8 NMSA 1978];

(g) a clinical psychologist licensed pursuant to the provisions of the Professional Psychologist Act [Chapter 61, Article 9 NMSA 1978]; 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.

History: Laws 2007, ch. 361, § 2.

ANNOTATIONS

Bracketed material. — Laws 2016, ch. 90, § 29 repealed the Osteopathic Physicians' Assistants Act, effective July 1, 2016.

Effective dates. — Laws 2007, ch. 361 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 15, 2007, 90 days after the adjournment of the legislature.

Applicability. — Laws 2007, ch. 361, § 10 provided that Laws 2007, ch. 361, § 2 apply to taxable years beginning on or after January 1, 2007.

7-2-18.23. Refundable credit; 2007 taxable year.

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:

Adjusted Gross Income		Credit Amount for Taxpayer and Spouse	Additional Credit Amount for Each Dependent
Over	Not Over		
0	$30,000	$100	$50.00
$30,000	$50,000	$ 80.00	$40.00
$50,000	$70,000	$ 50.00	$25.00
$70,000		$ 0.00	$ 0.00; or

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

Adjusted Gross Income		Credit Amount for Taxpayer	Additional Credit Amount for Each Dependent
Over	Not Over		
0	$30,000	$50.00	$50.00
$30,000	$50,000	$40.00	$40.00

$50,000	$70,000	$25.00	$25.00
$70,000		$ 0.00	$ 0.00.

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.

History: Laws 2008 (2nd S.S.), ch. 3, § 1.

ANNOTATIONS

Cross references. — For Section 152 of the Internal Revenue Code, *see* 26 U.S.C. § 152.

Emergency clause. — Laws 2008, ch. 3, § 4 contained an emergency clause and was approved on August 25, 2008.

Applicability. — Laws 2008, ch. 3, § 3 provided that the provisions of Laws 2008, ch. 3, § 1 apply to taxable years beginning between January 1, 2007 and December 31, 2007.

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.

History: Laws 2009, ch. 271, § 1.

ANNOTATIONS

Effective dates. — Laws 2009, ch. 271 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 19, 2009, 90 days after the adjournment of the legislature.

7-2-18.25. Repealed.

History: Laws 2009, ch. 279, § 1; repealed by Laws 2023, ch. 85, § 28.

ANNOTATIONS

Repeals. — Laws 2023, ch. 85, § 28 repealed 7-2-18.25 NMSA 1978, as enacted by Laws 2009, ch. 279, § 1, relating to advanced energy income tax credit, effective July 1, 2023. For provisions of former section, see the 2022 NMSA 1978 on NMOneSource.com.

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.

History: Laws 2010, ch. 84, § 1; 2020, ch. 20, § 1.

ANNOTATIONS

Applicability. — Laws 2010, ch. 84, § 3 provided that the provisions of Laws 2010, ch. 84, § 1 apply to taxable years beginning on or after January 1, 2011 and ending prior to January 1, 2020.

The 2020 amendment, effective May 20, 2020, extended the agricultural biomass income tax credit until the year 2030, required taxpayers claiming the credit to report the amount of the credit to the taxation and revenue department, and required the taxation and revenue department to compile an annual report on the agricultural biomass income tax credit and present the report to the revenue stabilization and tax policy committee and the legislative finance committee; in Subsection A, after "prior to January 1", deleted "2020" and added "2030"; and added new Subsections I and J and redesignated the succeeding subsection accordingly.

7-2-18.27. Repealed.

History: Laws 2011, ch. 89, § 1; repealed by Laws 2023, ch. 85, § 28.

ANNOTATIONS

Repeals. — Laws 2023, ch. 85, § 28 repealed 7-2-18.27 NMSA 1978, as enacted by Laws 2011, ch. 89, § 1, relating to credit, physician participation in cancer treatment clinical trials, effective July 1, 2023. For provisions of former section, *see* the 2022 NMSA 1978 on *NMOneSource.com*.

7-2-18.28. Repealed.

History: Laws 2012, ch. 55, § 1; repealed by Laws 2023, ch. 85, § 28.

ANNOTATIONS

Repeals. — Laws 2023, ch. 85, § 28 repealed 7-2-18.28 NMSA 1978, as enacted by Laws 2012, ch. 55, § 1, relating to veteran employment tax credit, effective July 1, 2023. For provisions of former section, *see* the 2022 NMSA 1978 on *NMOneSource.com*.

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 [Chapter 7, Article 2A NMSA 1978] 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:

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

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

E. For taxable years ending on or before December 31, 2024, the 2015 sustainable building tax credit may be claimed with respect to a sustainable residential building. The credit shall be calculated based on the amount of qualified occupied square footage, as indicated on the following chart:

Rating System/Level	Qualified Occupied Square Footage	Tax Credit per Square Foot
LEED-H Silver or Build Green NM Silver	Up to 2,000	$3.00
LEED-H Gold or Build Green NM Gold	Up to 2,000	$4.50
LEED-H Platinum or Build Green NM Emerald	Up to 2,000	$6.50
Manufactured Housing	Up to 2,000	$3.00.

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

subject to the limitations in Subsection G of this section. The certificate shall include the rating system certification level awarded to the building, the amount of qualified occupied square footage in the building and a calculation of the maximum amount of 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 that taxpayer's income tax return, if applicable, or may be sold, exchanged or otherwise transferred to another taxpayer. The parties to such a transaction shall notify the department of the sale, exchange or transfer within ten days of the sale, exchange or transfer.

L. If the approved amount of a 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 [Chapter 60, Article 14 NMSA 1978] 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.

History: Laws 2015, ch. 130, § 1; 2021, ch. 84, § 1.

ANNOTATIONS

Cross references. — For the federal National Manufactured Housing Construction and Safety Standards Act of 1974, *see* 42 U.S.C. § 5403.

The 2021 amendment, effective June 18, 2021, changed the name of the "new sustainable building tax credit" to the "2015 sustainable building tax credit", accelerated the termination of the 2015 sustainable building tax credit, provided the credit for projects completed prior to April 1, 2023, and provided that claims for credit may be made by the end of tax year 2024; substituted "new" with "2015" preceding "sustainable building tax credit" throughout; after "December 31", changed "2026" to "2024" throughout; in Subsection A, after "that is a sustainable building", added "provided that the construction, renovation or installation project is completed prior to April 1, 2023", and after "Corporate Income and Franchise Tax Act", added "or the 2021 sustainable building tax credit pursuant to the Income Tax Act or the Corporate Income and Franchise Tax Act"; and in Subsection F, after "January 1, 2017", added "but prior to April 1, 2023".

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 [Chapter 32A NMSA 1978] 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 [Chapter 7, Article 2A NMSA 1978].

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.

History: Laws 2018, ch. 36, § 1.

ANNOTATIONS

Effective dates. — Laws 2018, ch. 36 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 16, 2018, 90 days after the adjournment of the legislature.

Applicability. — Laws 2018, ch. 36, § 3 provided that the provisions of Laws 2018, ch. 36, §§ 1 and 2 apply 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.

History: Laws 2020, ch. 13, § 1; 2022, ch. 47, § 8.

ANNOTATIONS

The 2022 amendment, effective May 18, 2022, extended the sunset on the new solar market development income tax credit, increased the aggregate amount of credits that may be certified as eligible in a calendar year, provided that the new solar market development income tax credit is transferable, and provided that the portion of a new solar market development income tax credit that exceeds a taxpayer's liability in the taxable year in which the credit is claimed shall be refunded to the taxpayer rather than carried over for five years; in Subsection A, after "For taxable years prior to January 1", changed "2028" to "2032"; in Subsection E, changed "eight million dollars ($8,000,000)" to "twelve million dollars ($12,000,000)", and added "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 day of the sale, exchange or transfer."; and in Subsection G, after "taxable year in which the credit is claimed", deleted "may be carried forward for a maximum of five consecutive taxable years" and added "shall be refunded to the taxpayer".

Applicability. — Laws 2022, ch. 47, § 16 provided that the provisions of Laws 2022, ch. 47, § 8 apply to the 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 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 [Chapter 7, Article 2A NMSA 1978] 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:

Rating Level	Qualified Occupied Square Footage	Tax Credit per Square Foot
LEED-NC Platinum	First 10,000	$5.25
	Next 40,000	$2.25
	Over 50,000 up to 200,000	$1.00
LEED-EB or CS Platinum	First 10,000	$3.40
	Next 40,000	$1.30
	Over 50,000 up to 200,000	$0.35
LEED-CI Platinum	First 10,000	$1.50
	Next 40,000	$0.40
	Over 50,000	

	up to 200,000	$0.30
LEED-NC Gold	First 10,000	$3.00
	Next 40,000	$1.00
	Over 50,000	
	up to 200,000	$0.25
LEED-EB or -CS Gold	First 10,000	$2.00
	Next 40,000	$1.00
	Over 50,000	
	up to 200,000	$0.25
LEED-CI Gold	First 10,000	$0.90
	Next 40,000	$0.40
	Over 50,000	
	up to 200,000	$0.10; and

(b) with additional amounts based on the additional criteria and the amount of qualified occupied square footage, as indicated in the following chart:

Additional Criteria	Qualified Occupied Square Footage	Tax Credit per Square Foot
Fully Electric Building	First 50,000	$1.00
	Over 50,000	
	up to 200,000	$0.50
Zero Carbon, Energy, Waste or Water Certified	First 50,000	$0.25
	Over 50,000	
	up to 200,000	$0.10;

(2) for the renovation of a commercial building that was built at least ten years prior to the date of the renovation, has twenty thousand square feet or more of space in which temperature is controlled and is broadband ready and electric vehicle ready, the amount of credit shall be calculated by multiplying two dollars twenty-five cents ($2.25) by the amount of qualified occupied square footage in the building, up to a maximum of one hundred fifty thousand dollars ($150,000) per renovation; provided that the renovation reduces total energy and power costs by fifty percent when compared to the most current energy standard for buildings except low-rise residential buildings, as developed by the American society of heating, refrigerating and 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:

Product	Amount of Credit

	Affordable Housing	Non-Affordable Housing
Energy Star Air Source Heat Pump	$2,000	$1,000
Energy Star Ground Source Heat Pump	$2,000	$1,000
Energy Star Windows and Doors	100% of product cost up to $1,000	50% of product cost up to $500
Insulation Improvements That Meet Rules of the Energy, Minerals and Natural Resources Department	100% of product cost up to $2,000	50% of product cost up to $1,000
Energy Star Heat Pump Water Heater	$700	$350
Electric Vehicle Ready	100% of product cost up to $3,000	50% of product cost up to $1,500;

(4) for the construction of a new sustainable residential building that is broadband ready and electric vehicle ready and is completed on or after January 1, 2022, the amount of credit shall be calculated:

(a) based on the certification level the building has achieved in the rating level and the amount of qualified occupied square footage in the building, as indicated on the following chart:

Rating Level	Qualified Occupied Square Footage	Tax Credit per Square Foot
LEED-H Platinum	Up to 2,000	$5.50
LEED-H Gold	Up to 2,000	$3.80
Build Green Emerald	Up to 2,000	$5.50
Build Green Gold	Up to 2,000	$3.80
Manufactured Housing	Up to 2,000	$2.00; and

(b) with additional amounts based on the additional criteria and the amount of qualified occupied square footage, as indicated in the following chart:

Additional Criteria	Qualified Occupied Square Footage	Tax Credit per Square Foot
Fully Electric Building	Up to 2,000	$1.00

Zero Carbon, Energy, Waste or Water Certified	Up to 2,000	$0.25; and

(5) for the installation of the following energy-conserving products to an existing residential building, the amount of credit shall be based on the cost of the product installed, which shall include installation costs, and if the building is affordable housing or the taxpayer is a low-income taxpayer, per product installed:

Product	Amount of Credit Affordable Housing and Low-Income	Non-Affordable Housing and Non-Low Income
Energy Star Air Source Heat Pump	$2,000	$1,000
Energy Star Ground Source Heat Pump	$2,000	$1,000
Energy Star Windows and Doors	100% of product cost up to $1,000	50% of product cost up to $500
Insulation Improvements That Meet Rules of the Energy, Minerals and Natural Resources Department	100% of product cost up to $2,000	50% of product cost up to $1,000
Energy Star Heat Pump Water Heater	$700	$350
Electric Vehicle Ready	$1,000	$500.

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 [Chapter 7, Article 2A NMSA 1978] shall not exceed in any calendar year an aggregate amount of:

(1) one million dollars ($1,000,000) with respect to the construction of new sustainable commercial buildings;

(2) two million dollars ($2,000,000) with respect to the construction of new sustainable residential buildings that are not manufactured housing;

(3) two hundred fifty thousand dollars ($250,000) with respect to the construction of new sustainable residential buildings that are manufactured housing;

(4) one million dollars ($1,000,000) with respect to the renovation of large commercial buildings; and

(5) two million nine hundred thousand dollars ($2,900,000) with respect to the installation of energy-conserving products in existing commercial buildings pursuant to Paragraph (3) of Subsection B of this section and existing residential buildings pursuant to Paragraph (5) of Subsection B of this section.

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

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 [Chapter 60, Article 14 NMSA 1978] 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 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.

History: Laws 2021, ch. 84, § 2; 2022, ch. 47, § 9.

ANNOTATIONS

The 2022 amendment, effective May 18, 2022, provided for an earlier sunset date for the 2021 sustainable building tax credit, and changed the start of the eligibility period for the 2021 sustainable building tax credit from April 1, 2023 to January 1, 2022; in Subsection A, after "prior to January 1,", changed "2030" to "2028"; in Subsection B, Paragraphs B(1) and B(4), deleted "April 1, 2023" and added "January 1, 2022"; in Subsection C, after "on or after January 1", changed "2021" to "2022"; and in Subsection F, after each occurrence of "pursuant to Section", deleted "7-2-18.14" and added "7-2-18.31".

Applicability. — Laws 2021, ch. 84, § 5 provided that the provisions of 7-2-18.32 NMSA 1978 and 7-2A-28.1 NMSA 1978 apply to taxable years beginning on or after January 1, 2021.

7-2-18.33. Credit; nurses; 2022 taxable year.

A. For taxable year 2022, a taxpayer who is not a dependent of another individual and who was employed full time as a nurse at a hospital located in New Mexico may apply for, and the department may allow, a tax credit against the taxpayer's tax liability pursuant to the Income Tax Act pursuant to the provisions of this section.

B. The amount of tax credit allowed pursuant to this section shall be in an amount equal to one thousand dollars ($1,000).

C. To receive a tax credit provided by this section, a taxpayer shall apply to the department on forms and in the manner prescribed by the department. The application shall include a certification by the hospital for which the taxpayer was employed in 2022 that the taxpayer was employed full time throughout 2022 as a nurse by the hospital.

D. That portion of the tax credit that exceeds a taxpayer's tax liability in the taxable year in which the credit is claimed shall be refunded to the taxpayer.

E. A taxpayer allowed a tax credit pursuant to this section shall report the amount of the credit to the taxation and revenue department in a manner required by that department.

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

G. As used in this section:

(1) "full time" means working at least thirty hours per week for forty-four weeks per year;

(2) "hospital" means a facility licensed as a hospital by the department of health; and

(3) "nurse" means a person licensed as a registered nurse or licensed practical nurse pursuant to the Nursing Practice Act [Chapter 61, Article 3 NMSA 1978].

History: Laws 2022, ch. 47, § 3.

ANNOTATIONS

Effective dates. — Laws 2022, ch. 47, § 3 was effective May 18, 2022, 90 days after adjournment of the legislature.

7-2-18.34. Child income tax credit.

A. For taxable years prior to January 1, 2032, a taxpayer who is a resident and is not a dependent of another individual may apply for, and the department may allow, a credit against the taxpayer's tax liability imposed pursuant to the Income Tax Act for each qualifying child of the taxpayer. The tax credit provided by this section may be referred to as the "child income tax credit".

B. Except as provided in Subsection D of this section, the child income tax credit may be claimed as shown in the following table:

Adjusted gross income is Over	But not over	Amount of credit per qualifying child is
$ 0	$ 25,000	$600
25,000	50,000	400
50,000	75,000	200
75,000	100,000	100
100,000	200,000	75
200,000	350,000	50
350,000		25.

C. If a taxpayer's adjusted gross income is less than zero, the taxpayer may claim a tax credit in the amount shown in the first row of the table provided in Subsection B of this section.

D. For the 2024 taxable year and each subsequent taxable year, the amount of credit shown in the table in Subsection B of this section shall be adjusted to account for inflation. The department shall make the adjustment by multiplying each amount of credit by a fraction, the numerator of which is the consumer price index ending during the prior taxable year and the denominator of which is the consumer price index ending

in tax year 2022. The result of the multiplication shall be rounded down to the nearest one dollar ($1.00), except that if the result would be an amount less than the corresponding amount for the preceding taxable year, then no adjustment shall be made.

E. To receive a child income tax credit, a taxpayer shall apply to the department on forms and in the manner prescribed by the department.

F. That portion of a child income tax credit that exceeds a taxpayer's tax liability in the taxable year in which the credit is claimed shall be refunded.

G. Married individuals filing separate returns for a taxable year for which they could have filed a joint return may each claim only one-half of the child income tax credit that would have been claimed on a joint return.

H. A taxpayer allowed a tax credit pursuant to this section shall report the amount of the credit to the department in a manner required by the department.

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

J. As used in this section:

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

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

History: Laws 2022, ch. 47, § 5; 2023, ch. 211, § 9.

ANNOTATIONS

The 2023 amendment, effective June 16, 2023, increased the child tax credit for the lowest three income levels, and provided that the child tax credit amounts shall be adjusted annually to account for inflation; in Subsection A, after "For taxable years", deleted "beginning January 1, 2023 and"; in Subsection B, in the introductory clause, added "Except as provided in Subsection D of this section"; in the table, after the first

occurrence of $25,000, changed "175" to "600", after the first occurrence of "50,000", deleted "150" and added "400", and after the first occurrence of "75,000", deleted "125" and added "200"; and added a new Subsection D; redesignated former Subsections D through I as Subsections E through J, respectively; and in Subsection J, added Paragraph J(1) and new paragraph designation "(2)".

Applicability. — Laws 2023, ch. 211, § 43 provided:

A. The provisions of Laws 2023, ch. 211, § 9 apply to taxable years beginning on or after January 1, 2023.

B. The provisions of Laws 2023, ch. 211, §§ 31 through 35 apply to film production companies that commence principal photography for a film or commercial audiovisual product on or after July 1, 2023.

7-2-19. Repealed.

ANNOTATIONS

Repeals. — Laws 1990, ch. 49, § 19 repealed 7-2-19 NMSA 1978, as enacted by Laws 1965, ch. 202, § 12, relating to credit for taxes paid other states by nonresident individuals, effective May 16, 1990. For provisions of former section, *see* the 1989 NMSA 1978 on *NMOneSource.com.*

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.

History: 1953 Comp., § 72-15A-13, enacted by Laws 1965, ch. 202, § 13; 1981, ch. 37, § 30; 1983, ch. 213, § 6; 1990, ch. 49, § 11.

ANNOTATIONS

The 1990 amendment, effective May 16, 1990, substituted "secretary" for "director" in Subsections A and B and "department" for "division" at the end of Subsection A.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 71 Am. Jur. 2d State and Local Taxation § 589.

85 C.J.S. Taxation § 1699.

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.

History: 1953 Comp., § 72-15A-14, enacted by Laws 1965, ch. 202, § 14; 1981, ch. 37, § 31.

ANNOTATIONS

Cross references. — For returns and payment generally, *see* 7-2-12 NMSA 1978.

For the Internal Revenue Code, *see* 26 U.S.C. § 1 et seq.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Section 52(a) of the Internal Revenue Code requiring receivers, trustees in bankruptcy or assignees operating business or property of corporations to make income tax returns and the like, 31 A.L.R.2d 877.

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.

History: 1978 Comp., § 7-2-21.1, enacted by Laws 1981, ch. 37, § 32.

ANNOTATIONS

Effective dates. — Laws 1981, ch. 37 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 19, 1981, 90 days after the adjournment of the legislature.

Cross references. — For accounting methods used by corporations, *see* 7-2A-11 NMSA 1978.

For deduction of accounting services from gross receipts by corporation, *see* 7-9-69 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 71 Am. Jur. 2d State and Local Taxation §§ 578, 579.

85 C.J.S. Taxation § 1759.

7-2-22. Administration.

The Income Tax Act shall be administered pursuant to the provisions of the Tax Administration Act [Chapter 7, Article 1 NMSA 1978].

History: 1953 Comp., § 72-15A-15, enacted by Laws 1965, ch. 202, § 18; 1981, ch. 37, § 33.

ANNOTATIONS

Cross references. — For provisions applicable to administration and enforcement, *see* 7-1-2 NMSA 1978.

7-2-23. Finding[; wildlife funds].

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 [7-2-23 to 7-2-25 NMSA 1978] 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.

History: Laws 1981, ch. 343, § 1.

ANNOTATIONS

Effective dates. — Laws 1981, ch. 343 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 19, 1981, 90 days after the adjournment of the legislature.

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

7-2-24. Optional designation of tax refund contribution [; game protection 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 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 [Chapter 7, Article 2C NMSA 1978] and any designation made under the provisions of this section to such refunds is void.

History: Laws 1981, ch. 343, § 2; 1987, ch. 277, § 4.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

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 department 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 [Chapter 7, Article 2C NMSA 1978] and any designation made under the provisions of this section to such refunds is void.

History: 1978 Comp., § 7-2-24.1, enacted by Laws 1992, ch. 108, § 4.

ANNOTATIONS

Effective dates. — Laws 1992, ch. 108 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 20, 1992, 90 days after the adjournment of the legislature.

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.

History: Laws 2021, ch. 90, § 1.

ANNOTATIONS

Effective dates. — Laws 2021, ch. 90 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 18, 2021, 90 days after adjournment of the legislature.

Applicability. — Laws 2021, ch. 90, § 2 provided that the provisions of Laws 2021, ch. 90, § 1 apply to taxable years beginning on or after January 1, 2021.

7-2-25. Repealed.

ANNOTATIONS

Repeals. — Laws 1987, ch. 277, § 7 repealed 7-2-25 NMSA 1978, as enacted by Laws, 1981, ch. 343, § 3, relating to contributions credited to game protection fund, effective June 19, 1987.

7-2-26. Repealed.

ANNOTATIONS

Repeals. — Laws 1985, ch. 154, § 6 repealed 7-2-26 NMSA 1978, as enacted by Laws 1985, ch. 154, § 3, relating to distribution of the statue of liberty fund, effective December 31, 1986.

7-2-27. Repealed.

History: 1978 Comp., § 7-2-27, enacted by Laws 1987, ch. 257, § 2; repealed by 2016, ch. 7, § 4.

ANNOTATIONS

Repeals. — Laws 2016, ch. 7, § 4 repealed 7-2-27 NMSA 1978, as enacted by Laws 1987, ch. 257, § 2, relating to legislative findings and intent, effective May 18, 2016. For provisions of former section, *see* the 2015 NMSA 1978 on *NMOneSource.com*.

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 [Chapter 7, Article 2C NMSA 1978], and any

designation under the provisions of this section with respect to such intercepted refunds is void.

History: 1978 Comp., § 7-2-28, enacted by Laws 1987, ch. 257, § 3; 2011, ch. 42, § 3; 2016, ch. 7, § 2.

ANNOTATIONS

Delayed repeals. — Laws 1987, ch. 257, § 6 repealed 7-2-28 NMSA 1978, as enacted by Laws 1987, ch. 257, § 3, relating to legislative findings and intent as to additional funds to increase the size of the Santa Fe national cemetery, effective on the January 1 of the year following the year on which the sum of contributions received on or after January 1, 1988, pursuant to 7-2-28 NMSA 1978, equals or exceeds $1,070,000.

The 2016 amendment, effective May 18, 2016, changed the name of the veterans' national cemetery fund to the veterans' state cemetery fund; in Subsection A, after "veterans'", deleted "national" and added "state"; in Subsection B, after each occurrence of "Veterans'", deleted "National" and added "State".

The 2011 amendment, effective June 17, 2011, made stylistic changes.

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.

History: Laws 2011, ch. 42, § 1; 2016, ch. 7, § 3.

ANNOTATIONS

The 2016 amendment, effective May 18, 2016, changed the name of the veterans' national cemetery fund to the veterans' state cemetery fund, and removed a reference to a repealed section of the NMSA 1978; in the heading, after "veterans'", deleted "national" and added "state", in the first sentence, after ""veterans'", deleted "national" and added "state", and in the last sentence, after "services department", deleted "to carry out the intent of Section 7-2-27 NMSA 1978".

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.

History: Laws 1987, ch. 265, § 1.

ANNOTATIONS

Effective dates. — Laws 1987, ch. 265 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 19, 1987, 90 days after the adjournment of the legislature.

Compiler's notes. — The term "this act", referred to in this section, means Laws 1987, Chapter 265, which appears as §§ 7-1-6.18, 7-2-29, 7-2-30, 26-2-4, and 26-2-4.1 NMSA 1978.

7-2-30. Optional designation of tax refund contribution [; substance abuse education fund].

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.

History: Laws 1987, ch. 265, § 2.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Effective dates. — Laws 1987, ch. 265 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 19, 1987, 90 days after the adjournment of the legislature.

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 [Chapter 7, Article 2C NMSA 1978], and any designation made under the provisions of this section to such refunds is void.

History: Laws 2005, ch. 56, § 2.

ANNOTATIONS

Cross references. — For the amyotrophic lateral sclerosis research fund, *see* 24-20-4 NMSA 1978.

Effective dates. — Laws 2005, ch. 56, § 2 applies to taxable years beginning on or after January 1, 2005.

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 [Chapter 7, Article 2C NMSA 1978], and any designation made under the provisions of this section to such refunds is void.

History: Laws 2005, ch. 87, § 2.

ANNOTATIONS

Effective dates. — Laws 2005, ch. 87 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 17, 2005, 90 days after adjournment of the legislature.

Applicability. — Laws 2005, ch. 87, § 3 provided that Laws 2005, ch. 87, § 2 apply to taxable years beginning on or after January 1, 2005.

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 [Chapter 7, Article 2C NMSA 1978], and any designation made under the provisions of this section to such refunds is void.

History: Laws 2005, ch. 220, § 2; 2015, ch. 150, § 2; 2018, ch. 4, § 2.

ANNOTATIONS

The 2018 amendment, effective July 1, 2018, changed the eligibility requirements for National Guard members to receive assistance from income tax refund contributions; in Subsection A, after "New Mexico national guard", deleted "activated for overseas service"; and in Subsection B, after "New Mexico national guard", deleted "activated for overseas service".

The 2015 amendment, effective April 10, 2015, authorized a designation of tax refund contribution for assistance to members of the New Mexico national guard activated for overseas service; and in Subsections A and B, after "activated for", added "overseas", and after "service", deleted "in the global war on terrorism".

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 [Chapter 7, Article 2C NMSA 1978], and any designation made under the provisions of this section to such refunds is void.

History: Laws 2009, ch. 175, § 2; 2017, ch. 115, § 2.

ANNOTATIONS

The 2017 amendment, effective June 16, 2017, redesignated tax contributions from the state parks division of the energy, minerals and natural resources department to the veterans' services department for the operation, maintenance and improvement of the Vietnam veterans memorial near Angel Fire, New Mexico; in the catchline, after "memorial", deleted "state park"; in Subsection A, after "money held by the", added "taxation and revenue", after "individual to be paid to the", deleted "state parks division of the energy, minerals and natural resources" and added "veterans' services", and after "Vietnam veterans memorial", deleted "state park"; in Subsection B, after each occurrence of "Vietnam Veterans Memorial", deleted "State Park", and after "refund to the", deleted "state parks division of the energy, minerals and natural resources" and added "veterans' services".

Temporary provisions. — Laws 2017, ch. 90, § 1, effective June 16, 2017, provided:

A. Upon ratification of the transfer of the real property of Vietnam Veterans Memorial state park in Colfax county from the energy, minerals and natural resources department to the general services department, all programs, functions, personnel, appropriations, money, records, furniture, equipment, supplies and other property belonging to the energy, minerals and natural resources department pertaining to Vietnam Veterans Memorial state park in Colfax county shall be transferred to the veterans' services department.

B. Upon ratification of the transfer of the real property of Vietnam Veterans Memorial state park in Colfax county from the energy, minerals and natural resources department to the general services department, all contractual obligations of the energy, minerals and natural resources department pertaining to any of the function delineated in Subsection A of this section shall be transferred to the veterans' services department.

C. Upon ratification of the transfer of the real property of Vietnam Veterans Memorial state park in Colfax county from the energy, minerals and natural resources department to the general services department, all references in law to the energy, minerals and natural resources department pertaining to any of the functions delineated in Subsection A of this section shall be transferred to the veterans' services department.

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 [Chapter 7, Article 2C NMSA 1978], and any designation made under the provisions of this section to such refunds is void.

History: Laws 2012, ch. 7, § 1.

ANNOTATIONS

Effective dates. — Laws 2012, ch. 7 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 16, 2012, 90 days after the adjournment of the legislature.

Applicability. — Laws 2012, ch. 7, § 2 provided that the provisions of Laws 2012, ch. 7, § 1 apply to taxable years beginning on or after January 1, 2013.

7-2-30.6. 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 [Chapter 7, Article 2C NMSA 1978], and any designation made under the provisions of this section to such refunds is void.

History: Laws 2012, ch. 57, § 1.

ANNOTATIONS

Effective dates. — Laws 2012, ch. 57 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 16, 2012, 90 days after the adjournment of the legislature.

Applicability. — Laws 2012, ch. 57, § 2 provided that the provisions of Laws 2012, ch. 57, § 1 apply to taxable years beginning on or after January 1, 2013.

7-2-30.7. 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 [Chapter 7, Article 2C NMSA 1978], and any designation made under the provisions of this section to such refunds is void.

History: Laws 2013, ch. 49, § 2; 2023, ch. 45, § 1.

ANNOTATIONS

The 2023 amendment, effective July 1, 2023, changed the name of the Horse Shelter Rescue Fund to the Equine Shelter Rescue Fund; substituted "equine" for each occurrence of "horse" throughout the section.

Applicability. — Laws 2013, ch. 49, § 3 provided that the provisions of Laws 2013, ch. 49, § 2 apply to taxable years beginning on or after January 1, 2013.

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 [Chapter 7, Article 2C NMSA 1978], 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.

History: Laws 2015, ch. 50, § 1.

ANNOTATIONS

Effective dates. — Laws 2015, ch. 50 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 19, 2015, 90 days after the adjournment of the legislature.

Applicability. — Laws 2015, ch. 50, § 2 provided that the provisions of Laws 2015, ch. 50, § 1 apply 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 [Chapter 7, Article 2C NMSA 1978], and a designation made pursuant to the provisions of this section to that refund is void.

History: Laws 2015, ch. 82, § 1.

ANNOTATIONS

Effective dates. — Laws 2015, ch. 82, § 6 made Laws 2015, ch. 82, § 1 effective July 1, 2015.

Applicability. — Laws 2015, ch. 82, § 5 provided that the provisions of Laws 2015, ch. 82, § 1 apply to taxable years beginning on or after January 1, 2015.

The provisions of Laws 2015, ch. 82, § 3 that require money collected pursuant to 66-3-424.3 NMSA 1978 to be deposited in the statewide spay and neuter subaccount apply to collections made on and after July 1, 2015.

7-2-30.10. Repealed.

History: Laws 2017, ch. 116, § 1; repealed by Laws 2017, ch. 116, § 3.

ANNOTATIONS

Repeals. — Laws 2017, ch. 116, § 3 repealed 7-2-30.10 NMSA 1978, as enacted by Laws 2017, ch. 116, § 1, relating to optional designation of tax refund contribution, sexual assault examination kit processing grant fund, sexual assault services, effective January 1, 2023. For provisions of former section, *see* the 2022 NMSA 1978 on *NMOneSource.com*.

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 [Chapter 7, Article 2C NMSA 1978], and any designation made under the provisions of this section to such refunds is void.

History: Laws 2018, ch. 51, § 1.

ANNOTATIONS

Effective dates. — Laws 2018, ch. 51 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 16, 2018, 90 days after the adjournment of the legislature.

Applicability. — Laws 2018, ch. 51, § 2 provided that the provisions of Laws 2018, ch. 51, § 1 apply to taxable years beginning on or after January 1, 2018.

7-2-31. 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 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 taxation and revenue 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 [Chapter 7, Article 2C NMSA 1978], and any designation made under the provisions of this section to such refunds is void.

History: Laws 1992, ch. 108, § 1.

ANNOTATIONS

Effective dates. — Laws 1992, ch. 108 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 20, 1992, 90 days after the adjournment of the legislature.

Cross references. — For contributions to conservation planting revolving fund, *see* 7-1-6.34 NMSA 1978.

For contributions to proper state political party, *see* 7-1-6.35 NMSA 1978.

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.

History: Laws 1999, ch. 47, § 5.

ANNOTATIONS

Effective dates. — Laws 1999, ch. 47 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 17, 1999, 90 days after the adjournment of the legislature.

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 [Chapter 21, Article 21K NMSA 1978] 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.

History: Laws 1997, ch. 259, § 8; 2023, ch. 17, § 2.

ANNOTATIONS

The 2023 amendment, effective June 16, 2023, after "education trust fund pursuant to", deleted "a college" and added "an education", and deleted "A husband and wife" and added "Married individuals".

7-2-33. Repealed.

ANNOTATIONS

Repeals. — Laws 2003, ch. 275, § 6 repealed 7-2-33 NMSA 1978, as enacted by Laws 1997, ch. 259, § 9, relating to education trust fund; earnings tax exempt; withdrawals are taxable income; authority to withhold tax, effective June 20, 2003. For provisions of former section, *see* the 2002 NMSA 1978 on *NMOneSource.com.*

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.

History: Laws 1999, ch. 205, § 1; 2003, ch. 2, § 7; 2019, ch. 270, § 14.

ANNOTATIONS

Cross references. — For Section 1222(11) of the Internal Revenue Code, *see* 26 U.S.C. § 1222.

The 2019 amendment, effective June 14, 2019, reduced the capital gains deduction from fifty percent to forty percent of the taxpayer's net capital gain income for the taxable year for which the deduction is being claimed; in Subsection A, Paragraph A(2), deleted "the following percentage" and added "forty percent", and deleted former Subparagraphs A(2)(a) through A(2)(e); and in Subsection B, deleted "A husband and wife" and added "Married individuals".

Temporary provisions. — Laws 2019, ch. 270, § 55, provided that a taxpayer who paid income tax for taxable year 2019 in installments through withholding or estimated tax payments pursuant to Section 7-2-12.2 NMSA 1978 but underpaid due to the changes made to Section 7-2-34 NMSA 1978 pursuant to this act shall not be subject to penalties and interest provisions of the Tax Administration Act for the underpayment; provided that the underpayment is solely attributable to the changes made to Section 7-2-34 NMSA 1978 pursuant to this act.

Applicability. — Laws 2019, ch. 270, § 59 provided the provisions of Laws 2019, ch. 270, § 14 apply to taxable years beginning on or after January 1, 2019.

The 2003 amendment, effective June 20, 2003, in Subsection A, inserted "the greater of:" and the end, added the Paragraph A(1) designation, added Paragraph A(2); added the Subsection B designation and redesignated the remaining subsections accordingly.

7-2-35. Deleted.

History: Laws 2000 (2nd S.S.), ch. 7, § 1.

ANNOTATIONS

Compiler's notes. — Laws 2000 (2nd S.S.), ch. 7, § 3 provided that the provisions of Laws 2000 (2nd S.S.), ch. 7, § 1 "shall not become effective unless Senate Bill 33 or similar bill of the second special session of the forty-fourth legislature is enacted into law and the General Appropriation Act of 2000 passed by the second special session of the forty-fourth legislature and enacted into law includes an appropriation of four million nine hundred seventy-five thousand dollars ($4,975,000) for the sole purpose of implementing an amendment to the state medicaid plan making eligible an individual who is the parent of a child under nineteen years of age who resides with that parent and whose family income does not exceed sixty percent of the federal poverty guidelines."

Senate Bill 33, referred to above, was vetoed by the governor. The appropriation of $4,975,000, referred to above, was in Laws 2000 (2nd S.S.), ch. 5, but was line item vetoed by the governor. Therefore, Section 7-2-35 NMSA 1978 failed to become effective and was deleted by the compiler.

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.

History: Laws 2005, ch. 113, § 1.

ANNOTATIONS

Cross references. — For the Internal Revenue Code, *see* 26 U.S.C. Sections 1 *et seq.*

Effective dates. — Laws 2005, ch. 113 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 17, 2005, 90 days after adjournment of the legislature.

Applicability. — Laws 2005, ch. 113, § 2 provided that Laws 2005, ch. 113 , § 1 apply to taxable years beginning on or after January 1, 2005.

7-2-37. Deduction; unreimbursed or uncompensated medical care expenses.

A. Prior to January 1, 2025, a taxpayer may claim a deduction from net income in an amount determined pursuant to Subsection B of this section for medical care expenses paid during the taxable year for medical care of the taxpayer, the taxpayer's spouse or a dependent if the expenses are not reimbursed or compensated for by insurance or otherwise and have not been included in the taxpayer's itemized deductions, as defined in Section 63 of the Internal Revenue Code, for the taxable year.

B. The deduction provided in Subsection A of this section may be claimed in an amount equal to the following percentage of medical care expenses paid during the taxable year based on the taxpayer's filing status and adjusted gross income as follows:

(1) for surviving spouses and married individuals filing joint returns:

If adjusted gross income is:	The following percent of medical care expenses paid may be deducted:
Not over $30,000	25 percent
More than $30,000 but not more than $70,000	15 percent
Over $70,000	10 percent;

(2) for single individuals and married individuals filing separate returns:

If adjusted gross income is:	The following percent of medical care expenses paid may be deducted:
Not over $15,000	25 percent
More than $15,000 but not more than $35,000	15 percent
Over $35,000	10 percent; and

(3) for heads of household:

If adjusted gross income is:	The following percent of medical care expenses paid may be deducted:
Not over $20,000	25 percent
More than $20,000 but not more than $50,000	15 percent
Over $50,000	10 percent.

C. As used in this section:

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

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

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

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

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

(b) prescribed drugs or insulin;

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

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

(e) nursing services, regardless of where the services are rendered, if provided by a practical nurse or a professional nurse licensed to practice in the state pursuant to the Nursing Practice Act [Chapter 61, Article 3 NMSA 1978];

(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.

History: Laws 2015 (1st S.S.), ch. 2, § 3.

ANNOTATIONS

Cross references. — For Internal Revenue Code, *see* 26 U.S.C. § 1 et seq.

Effective dates. — Laws 2015 (1st S.S.), ch. 2, § 3 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective September 6, 2015, 90 days after the adjournment of the legislature.

Applicability. — Laws 2015 (1st S.S.), ch. 2, § 25 provided that the provisions of Laws 2015 (1st S.S.), ch. 2, §§ 2 through 7 and 17 apply 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.

History: Laws 2019, ch. 264, § 1.

ANNOTATIONS

Effective dates. — Laws 2019, ch. 264 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2019, 90 days after adjournment of the legislature.

Applicability. — Laws 2019, ch. 264, § 2 provided that Laws 2019, ch. 264, § 1 apply 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.

History: Laws 2019, ch. 270, § 15.

ANNOTATIONS

Cross references. — For Sections 151 and 152 of the Internal Revenue Code, *see* 26 U.S.C. §§ 151 and 152 respectively.

Effective dates. — Laws 2019, ch. 270 contained no effective date provision for Laws 2019, ch. 270, § 15, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2019, 90 days after adjournment of the legislature.

Applicability. — Laws 2019, ch. 270, § 59 provided that Laws 2019, ch. 270, § 15 apply 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 [60-3A-1 NMSA 1978] 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.