**History:** Laws 2021, ch. 7, § 1.

**ANNOTATIONS**

**Effective dates.** — Laws 2021, ch. 7, § 37 made Laws 2021, ch. 7, § 1 effective July 1, 2021.

# ARTICLE 2A
# Corporate Income and Franchise Tax

## 7-2A-1. Short title.

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

**History:** 1978 Comp., § 7-2A-1, enacted by Laws 1981, ch. 37, § 34; 1986, ch. 20, § 32.

**ANNOTATIONS**

**Law reviews.** — 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.** — 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.

## 7-2A-2. Definitions.

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

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

B. "apportioned net income" or "apportioned net loss" means net income allocated and apportioned to New Mexico pursuant to the provisions of the Corporate Income and Franchise Tax Act or the Uniform Division of Income for Tax Purposes Act [Chapter 7, Article 4 NMSA 1978], but excluding from the sales factor any sales that represent intercompany transactions between members of the filing group;

C. "base income" means the federal taxable income or the federal net operating loss of a corporation for the taxable year calculated pursuant to the Internal Revenue Code, after special deductions provided in Sections 241 through 249 of the Internal

Revenue Code but without any deduction for net operating losses, as if the corporation filed a federal tax return as a separate domestic entity, modified as follows:

(1) adding to that income:

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

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

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

(d) 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) subtracting from that income:

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

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

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

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

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

(4) for a taxpayer that conducts a lawful business pursuant to the laws of this state, excludes an amount equal to any expenditure that is eligible to be claimed as a federal income tax deduction but is disallowed pursuant to Section 280E of the Internal Revenue Code, as that section may be amended or renumbered;

D. "captive real estate investment trust" means a corporation, trust or association taxed as a real estate investment trust pursuant to Section 857 of the Internal Revenue Code, the shares or beneficial interests of which are not regularly traded on an established securities market; provided that more than fifty percent of any class of beneficial interests or shares of the real estate investment trust are owned directly, indirectly or constructively by the taxpayer during all or a part of the taxpayer's taxable year;

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

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

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

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

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

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

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

G. "corporation" means corporations, joint stock companies, real estate trusts organized and operated under the Real Estate Trust Act [47-2-1 to 47-2-6 NMSA 1978], financial corporations and banks, other business associations and, for corporate income tax purposes, partnerships and limited liability companies taxed as corporations under the Internal Revenue Code;

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

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

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

K. "grandfathered net operating loss carryover" means:

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

(2) reduced by:

(a) adding back deductions that were taken by the corporation or corporations for royalties or interest paid to one or more related corporations, but only to the extent that such adjustment would not create a net loss for such related corporations; and

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

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

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

M. "net income" means:

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

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

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

(1) plus:

(a) the portion of an apportioned net loss properly reported to New Mexico for a taxable year beginning on or after January 1, 2020, on a separate year return, to the extent the taxpayer would have been entitled to include the portion of such apportioned

net loss in the taxpayer's consolidated net operating loss carryforward under the Internal Revenue Code if the taxpayer filed a consolidated federal return; and

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

(2) minus:

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

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

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

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

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

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

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

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

U. "separate year return" means a properly filed original or amended return for a taxable year beginning on or after January 1, 2020 by a taxpayer reporting a loss, a

portion of which is claimed as part of the net operating loss carryover by another taxpayer in a subsequent return period;

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

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

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

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

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

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

(1) related through common ownership; and

(2) economically interdependent with one another as demonstrated by the following factors:

(a) centralized management;

(b) functional integration; and

(c) economies of scale;

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

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

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

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

**History:** 1978 Comp., § 7-2A-2, enacted by Laws 1986, ch. 20, § 33; 1991, ch. 9, § 25; 1993, ch. 307, § 3; 1993, ch. 309, § 1; 1995, ch. 11, § 5; 1999, ch. 47, § 6; 2014, ch. 53, § 2; 2017, ch. 95, § 1; 2019, ch. 270, § 16; 2020 (1st S.S.), ch. 4, § 2; 2021 (1st S.S.), ch. 4, § 52; 2023, ch. 85, § 8.

## ANNOTATIONS

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

**The 2023 amendment,** effective July 1, 2023, revised the definition of "base income" for purposes of the Corporate Income and Franchise Tax Act; and in Subsection C, added Subparagraph C(1)(d).

**The 2021 (1st S.S.) amendment,** effective June 29, 2021, provided an exclusion, for certain taxpayers 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, to the definition of "base income" for purposes of the Corporate Income and Franchise Tax Act; and in Subsection C, added Paragraph C(4).

**The 2020 (1st S.S.) amendment,** effective June 29, 2020, amended the definition of "net operating loss deduction" for purposes of the Corporate Income and Franchise Tax Act to conform to the definitions found in the federal Tax Cuts and Jobs Act of 2017; and in Subsection O, after each occurrence of "Internal Revenue Code", added "as of January 1, 2018".

**The 2019 amendment,** effective January 1, 2020, defined "apportioned net income", "common ownership", "consolidated group", "filing group", "grandfathered net operating loss carryover", "net operating loss deduction", "related corporation", "return", separate year return", "taxable income", "waters-edge group" and "worldwide combined group", and revised and removed the definitions of certain terms, as used in the Corporate Income and Franchise Tax Act; deleted former Subsection A, which defined "affiliated group", and redesignated former Subsection B as Subsection A; added a new

Subsection B; in Subsection C, deleted "that part of the taxpayer'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:" and added "the federal taxable income or the federal net operating loss of a corporation for the taxable year calculated pursuant to the Internal Revenue Code, after special deductions provided in Sections 241 through 249 of the Internal Revenue Code but without any deduction for net operating losses, as if the corporation filed a federal tax return as a separate domestic entity, modified as follows", deleted former Paragraphs C(1) through C(3) and added new Paragraphs C(1) through C(3); added new Subsections E and F and redesignated former Subsections E and F as Subsections G and H, respectively; added a new Subsection I and redesignated former Subsection G as Subsection J; added a new Subsection K and redesignated former Subsections H and I as Subsections L and M, respectively; in Subsection M, after "means", deleted "base income adjusted to exclude", deleted Paragraphs (1) through (5) and added new Paragraphs M(1) and M(2); deleted former Subsection J, which defined "net operating loss", and redesignated former Subsection K as Subsection N; in Subsection N, deleted "the amount, or any portion of the amount, of a net operating loss for any taxable year that, pursuant to Paragraph (3), (4) or (5) of Subsection I of this section, may be excluded from base income" and added "the apportioned net loss properly reported on an original or amended tax return for taxable years beginning on or after January 1, 2020 by the taxpayer", and added new Paragraphs N(1) and N(2); added a new Subsection O and redesignated former Subsections L and M as Subsections P and Q, respectively; added new Subsections R and S and redesignated former Subsection N as Subsection T; added a new Subsection U and redesignated former Subsections O and P as Subsections V and W, respectively; added a new Subsection X and redesignated former Subsections Q through S as Subsections Y, Z and AA, respectively; in Subsection Z, after "corporation", added "or group of corporations filing a return pursuant to Section 7-2A-8.3 NMSA 1978"; in Subsection AA, after "unitary", deleted "corporations" and added "group", after "means", deleted "two or more integrated corporations other than any foreign corporation incorporated in a foreign country and not engaged in trade or business in the United States during the taxable year, that are owned in the amount of more than fifty percent and controlled by the same person and for which at least one of the following conditions exists" and added "a group of two or more corporations, including a captive real estate investment trust, but not including an S corporation, an insurance company subject to the provisions of the New Mexico Insurance Code, an insurance company that would be subject to the New Mexico Insurance Code if the insurance company engaged in business in this state or a real estate investment trust that is not a captive real estate investment trust, that are", deleted former Paragraphs (1) through (3) and added new Paragraphs AA(1) through AA(2); and added new Subsections BB and CC.

**Applicability.** — Laws 2019, ch. 270, § 59 provided that the provisions of Laws 2019, ch. 270, § 16 apply to taxable years beginning on or after January 1, 2020.

**The 2017 amendment,** effective June 16, 2017, defined "captive real estate investment trust" and "real estate investment trust", and revised the definition of "base income", for

purposes of the Corporate Income and Franchise Tax Act; in Subsection C, after "for income tax purposes plus", added paragraph designation "(1)", in Paragraph C(1), after "for that year", deleted "'base income' also includes", added paragraph designation "(2)", and added Paragraph C(3); added a new Subsection D and redesignated former Subsections D through K as Subsections E through L, respectively; in Subsection K, after "Subsection", changed "H" to "I"; and added a new Subsection M and redesignated former Subsections L through Q as Subsections N through S.

**The 2014 amendment,** effective May 21, 2014, excluded net operating loss carryover from net income for twenty years; in Subsection H, in Paragraph (4), after the first and second instances of "January 1, 1991", added "and prior to January 1, 2013"; in Subsection H, in Paragraph (4), 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 H, added Paragraph (5), including Subparagraphs (a) through (c); and in Subsection J, after "Paragraph (3), (4)", added "or (5)".

**The 1999 amendment,** effective June 18, 1999, deleted former Subsection F, which defined "financial corporation" and redesignated subsequent subsections accordingly; in Subsection H deleted former Paragraph (1), which read "amounts that have been taxed as income under the Banking and Financial Corporations Tax Act" and redesignated subsequent paragraphs accordingly; and updated statutory references.

**The 1995 amendment,** effective June 16, 1995, inserted "and limited liability companies" near the end of Subsection D and "of 1986" in Subsection H.

**The 1993 amendment,** added the language beginning "in no event" at the end of Subparagraph (5)(c) of Subsection I; inserted "limited liability company" in Subsection L; and inserted "other than any foreign corporation incorporated in a foreign country and not engaged in trade or business in the United States during the taxable year" in Subsection R.

**The 1991 amendment,** effective June 14, 1991, added the language beginning "plus, for taxable years" at the end of Subsection C; deleted "or 'director'" following "'department'" in Subsection E; deleted former Subsection F which read "'director' means the secretary of taxation and revenue or the secretary's delegate"; redesignated former Subsections G to J as present Subsections F to I; in present Subsection I, added present Paragraph (2) and Paragraphs (4) and (5), added "other" at the beginning of Paragraph (3) and made a related stylistic change; added present Subsections J, K and O; and redesignated former Subsections K to M and N to P as present Subsections L to N and P to R, respectively.

**Law reviews.** — For note, "The Entry and Regulation of Foreign Corporations Under New Mexico Law and Under the Model Business Corporation Act," see 6 Nat. Resources J. 617 (1966).

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

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 71 Am. Jur. 2d State and Local Taxation §§ 103 to 107, 255, 266 to 270, 272 to 276, 304, 451, 452.

Building and loan association as within provisions as to franchise taxes, 86 A.L.R. 826, 143 A.L.R. 1026.

Holding companies, 98 A.L.R. 1511.

Association or joint stock company, meaning of, within statutes taxing associations or joint stock companies as corporations, 108 A.L.R. 340, 144 A.L.R. 1050, 166 A.L.R. 1461.

Foreign corporation, validity, under Federal Constitution, of state tax on, or measured by, income of, 67 A.L.R.2d 1322.

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

## 7-2A-3. Imposition and levy of taxes.

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

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

**History:** 1978 Comp., § 7-2A-3, enacted by Laws 1981, ch. 37, § 36; 1986, ch. 20, § 34; 2019, ch. 270, § 17.

**ANNOTATIONS**

**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.

**The 2019 amendment,** effective January 1, 2020, modified certain language within the section; in Subsection A, after "upon the", deleted "net" and added "taxable", and after "income of", deleted "every domestic corporation and upon the net income of every foreign corporation employed or" and added "a corporation or group of corporations, in whatever jurisdiction organized or incorporated, that is".

**Applicability.** — Laws 2019, ch. 270, § 59 provided that the provisions of Sections 16 through 22 and 58 of Laws 2019, ch. 270 apply to taxable years beginning on or after January 1, 2020.

**Constitutionality.** — The United States supreme court has held that similar state franchise tax laws do not violate the federal constitution. *Southern Pac. Co. v. State Corp.Comm'n*, 1937-NMSC-059, 41 N.M. 556, 72 P.2d 15.

**More business interstate than intrastate.** — A franchise tax upon a foreign corporation is not invalid because its interstate business exceeds its intrastate business. *Southern Pac. Co. v. State Corp. Comm'n*, 1937-NMSC-059, 41 N.M. 556, 72 P.2d 15.

**"Property and business" in the state** as used in the former section was construed by the commission to mean all property of the corporation not used exclusively in interstate business, plus the total gross receipts from intrastate business therein. It did not refer to business across state lines. *Southern Pac. Co. v. State Corp. Comm'n,* 1937-NMSC-059, 41 N.M. 556, 72 P.2d 15.

**Constitutionality of formula applied to taxation of dividends received from foreign subsidiaries.** — Taxation of dividends from foreign subsidiaries under the separate corporate entity method violates the commerce clause of the United States Constitution, and application of the *Detroit* formula is an insufficient remedy. *Conoco, Inc. v. Taxation & Revenue Dep't*, 1997-NMSC-005, 122 N.M. 736, 931 P.2d 730, cert. denied, 521 U.S. 1112, 117 S. Ct. 2497, 138 L. Ed. 2d 1003 (1997).

**Law reviews.** — For note, "The Entry and Regulation of Foreign Corporations Under New Mexico Law and Under the Model Business Corporation Act," see 6 Nat. Resources J. 617 (1966).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 18 Am. Jur. 2d Corporations §§ 70 to 72; 71 Am. Jur. 2d State and Local Taxation §§ 254 to 276, 285 to 288, 294 to 296, 569, 571, 572, 574, 575.

Rights in navigable waters as franchise, 36 A.L.R. 1523.

Property tax distinguished from franchise tax, 103 A.L.R. 61.

Carriers by water, tax on, 105 A.L.R. 11, 139 A.L.R. 950.

Affiliated corporation, franchise tax of corporation as affected by creation of, 117 A.L.R. 508.

Nature of tax on foreign corporation as franchise or property tax, 131 A.L.R. 927.

Doing business, business done, or the like, outside the state, for purposes of allocating income under franchise tax law, what constitutes, 167 A.L.R. 943.

Validity under export-import clause of federal constitution of state tax on corporations, 20 A.L.R.2d 152, 46 L. Ed. 2d 955.

84 C.J.S. Taxation §§ 169 to 170, 177 to 180, 227 to 230; 85 C.J.S. Taxation §§ 1694 et seq.

## 7-2A-4. Exemptions.

No corporate income or franchise tax shall be imposed upon:

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

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

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

**History:** 1978 Comp., § 7-2A-4, enacted by Laws 1981, ch. 37, § 37; 1986, ch. 20, § 35; 1989, ch. 111, § 1.

**ANNOTATIONS**

**Cross references.** — For exemption of nonprofit corporations, *see* 53-8-28B NMSA 1978.

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

**The 1989 amendment,** effective June 16, 1989, substituted the present provisions of Subsection C for "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".

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 19 Am. Jur. 2d Corporations, § 2524; 71 Am. Jur. 2d State and Local Taxation §§ 309, 318, 326 to 331, 362 to 391, 428 to 435, 475, 477 to 482.

Exemption from taxation of property which religious or charitable body has no right to hold, 27 A.L.R. 1047.

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

Gift or trust for benefit of employees of corporation or business as within exemption or deduction provisions of succession tax or income tax law, 71 A.L.R. 870.

Permissible classification of insurance companies which will justify discrimination among them by taxing statutes, 83 A.L.R. 464.

Business trust, franchise tax on, as denial of equal protection of the laws, 108 A.L.R. 333.

Annuities, consideration paid for, as "premium" within contemplation of statute imposing franchise tax on insurance company, 109 A.L.R. 1060, 135 A.L.R. 1248.

What constitutes a trust, for income tax purposes, 113 A.L.R. 457.

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

Hospitals as within tax exemption provision not specifically naming hospital, 144 A.L.R. 1483.

Tax exemption of property of religious, educational, or charitable body as extending to property or income thereof used in publication or sale of literature, 154 A.L.R. 895.

What amounts to trust for benefit of employees within exemption from income tax, 161 A.L.R. 774.

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.

Receipt of payment from beneficiaries as affecting tax exemption of charitable institutions, 37 A.L.R.3d 1191.

Tax exemption of property of educational body as extending to property used by personnel as living quarters, 55 A.L.R.3d 485.

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 §§ 208 to 218, 261 to 262, 310 to 312, 321 et seq.; 85 C.J.S. Taxation §§ 1736 to 1737.

## 7-2A-4.1. Repealed.

**History:** Laws 2022, ch. 46, § 2; repealed by Laws 2023, ch. 159, § 4.

**ANNOTATIONS**

**Repeals.** — Laws 2023, ch. 159, § 4 repealed 7-2A-4.1 NMSA 1978, as enacted by Laws 2022, ch. 46, § 2, 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*.

## 7-2A-5. Corporate income tax rates.

The corporate income tax imposed on corporations by Section 7-2A-3 NMSA 1978 shall be:

| If the taxable income is: | The tax shall be: |
|---|---|
| Not over $500,000 | 4.8% of taxable income |
| Over $500,000 | $24,000 plus 5.9% of excess over $500,000. |

**History:** 1978 Comp., § 7-2A-5, enacted by Laws 1981, ch. 37, § 38; 1981, ch. 176, § 1; 1983, ch. 213, § 8; 1986, ch. 20, § 36; 1987, ch. 277, § 5; 2013, ch. 160, § 3; 2019, ch. 270, § 18.

**ANNOTATIONS**

**The 2019 amendment,** effective January 1, 2020, revised corporate income tax rates and corporate income tax brackets; in the introductory clause, after "shall be:", deleted "at the rates specified in the following tables:"; deleted former Subsections A through E, subsection designation "F." and the language "for taxable years beginning on or after January 1, 2018"; and preceding each occurrence of "income", deleted "net" and added "taxable".

**Applicability.** — Laws 2019, ch. 270, § 59 provided that the provisions of Sections 16 through 22 and 58 of Laws 2019, ch. 270 apply to taxable years beginning on or after January 1, 2020.

**The 2013 amendment,** effective January 1, 2014, decreased certain corporate income tax rates over five years; in Subsection A, added the introductory sentence; and added Subsections B through F.

**Use of federal tax code and regulations.** — New Mexico income taxation law does not adopt directly the Internal Revenue Code and Treasury Regulations, but does permit New Mexico taxpayers to enjoy the benefits of their election to use accelerated depreciation methodologies in calculating federal taxable income. *In re Rates and Charges of Mountain States Tel. & Tel. Co. v. N.M. State Corp. Comm'n*, 1986-NMSC-019, 104 N.M. 36, 715 P.2d 1332.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 71 Am. Jur. 2d State and Local Taxation § 469.

85 C.J.S. Taxation § 1698.

## 7-2A-5.1. Corporate franchise tax amount.

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

**History:** Laws 1986, ch. 20, § 37; 1992, ch. 78, § 3.

**ANNOTATIONS**

**The 1992 amendment,** effective May 20, 1992, added "or any fraction thereof" at the end of the section.

**Computation.** — The tax provided by the former section was a franchise tax, since neither the property nor the capital stock of the corporation is taxed. Values of property and gross receipts are used as factors to determine the number of shares of the corporate stock that measures the tax. *Southern Pac. Co. v. State Corp. Comm'n*, 1937-NMSC-059, 41 N.M. 556, 72 P.2d 15.

## 7-2A-6. Tax computation; alternative method.

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

**History:** 1978 Comp., § 7-2A-6, enacted by Laws 1981, ch. 37, § 39; 1986, ch. 20, § 38.

**ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 85 C.J.S. Taxation § 1756 to 1759.

## 7-2A-7. Taxes applied to corporations on federal areas.

To the extent permitted by law, no corporation shall be relieved from liability for corporate income tax or corporate franchise tax by reason of receiving income from transactions occurring or work or services performed within a federal area.

**History:** 1978 Comp., § 7-2A-7, enacted by Laws 1981, ch. 37, § 40; 1986, ch. 20, § 39.

**ANNOTATIONS**

**Cross references.** — For other taxes applicable in federal areas, *see* 19-2-5 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 71 Am. Jur. 2d State and Local Taxation § 228.

84 C.J.S. Taxation § 292.

## 7-2A-8. Repealed.

**History:** 1978 Comp., § 7-2A-8, enacted by Laws 1981, ch. 37, § 41; 1983, ch. 213, § 9; 1986, ch. 20, § 40; 1990, ch. 49, § 12; 1995, ch. 11, § 6; 1996, ch. 16, § 2; repealed by Laws 2019, ch. 270, § 58.

**ANNOTATIONS**

**Repeals.** — Laws 2019, ch. 270, § 58 repealed 7-2A-8 NMSA 1978, as enacted by Laws 1981, ch. 37, § 41, relating to credit, income allocation and apportionment, effective January 1, 2020. For provisions of former section, *see* 2019 NMSA 1978 on *NMOneSource.com*.

## 7-2A-8.1. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1990, ch. 49, § 22 repealed 7-2A-8.1 NMSA 1978, as enacted by Laws 1983, ch. 213, § 10, relating to credit for solar or wind energy equipment installation, effective January 1, 1993. For provisions of former section, *see* the 1992 NMSA 1978 on *NMOneSource.com.*

## 7-2A-8.2. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1990, ch. 49, § 21 repealed 7-2A-8.2 NMSA 1978, as enacted by Laws 1983, ch. 213, § 11, relating to tax credits for solar capital investments, effective

January 1, 1991. For provisions of former section, *see* the 1990 NMSA 1978 on *NMOneSource.com.*

## 7-2A-8.3. Combined and consolidated returns.

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

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

**History:** 1978 Comp., § 7-2A-8.3, enacted by Laws 1983, ch. 213, § 12; 1986, ch. 20, § 43; 1993, ch. 307, § 4; 1993, ch. 309, § 2; 2013, ch. 160, § 4; 2019, ch. 270, § 19.

**ANNOTATIONS**

**The 2019 amendment,** effective January 1, 2020, completely rewrote the section; in the section heading, added "and consolidated"; and deleted former Subsections A through D and added new Subsections A and B.

**Applicability.** — Laws 2019, ch. 270, § 59 provided that the provisions of Sections 16 through 22 and 58 of Laws 2019, ch. 270 apply to taxable years beginning on or after January 1, 2020.

**The 2013 amendment,** effective July 1, 2013, required combined reporting for certain unitary corporations with a retail facility of more than thirty thousand square feet but that do not have nonretail facilities that employ at least seven hundred fifty employees; in the first sentence, after "combined net income were that of one corporation", added the remainder of the sentence; and added Subsection D.

**The 1993 amendment,** effective June 18, 1993, rewrote this section to the extent that a detailed comparison was impracticable.

## 7-2A-8.4. Repealed.

**History:** 1978 Comp., § 7-2A-8.4, enacted by Laws 1983, ch. 213, § 13; 1986, ch. 20, § 44; 1993, ch. 307, § 5; 1993, ch. 309, § 3; repealed by Laws 2019, ch. 270, § 58.

**ANNOTATIONS**

**Repeals.** — Laws 2019, ch. 270, § 58 repealed 7-2A-8.4 NMSA 1978, as enacted by Laws 1983, ch. 213, § 13, relating to consolidated returns, effective January 1, 2020. For provisions of former section, *see* the 2019 NMSA 1978 on *NMOneSource.com*.

## 7-2A-8.5. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1990, ch. 49, § 23 repealed 7-2A-8.5 NMSA 1978, as enacted by Laws 1983, ch. 212, § 2, relating to corporate income tax credit for geothermal capital investment, effective January 1, 1996.

## 7-2A-8.6. Credit for preservation of cultural property; corporate income tax credit.

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

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

(2) if a cultural property, whose owner may otherwise claim the credit set forth in Paragraph (1) of this subsection is also located within an arts and cultural district designated by the state or a municipality pursuant to the Arts and Cultural District Act [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) it submitted a plan and specifications for restoration, rehabilitation or preservation to the committee and received approval from the committee for the plan and specifications prior to commencement of the restoration, rehabilitation or preservation;

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

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

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

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

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

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

G. As used in this section:

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

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

**History:** 1978 Comp., § 7-2A-8.6, enacted by Laws 1984, ch. 34, § 2; 1986, ch. 20, § 46; 2007, ch. 160, § 15.

**ANNOTATIONS**

**Cross references.** — For credit for preservation of cultural property against income tax, *see* 7-2-18.2 NMSA 1978.

**The 2007 amendment,** effective June 15, 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 apply to taxable years beginning on or after January 1, 2009.

## 7-2A-8.7. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1994, ch. 10, § 1, repealed 7-2A-8.7 NMSA 1978, as enacted by Laws 1993, ch. 309, § 4, relating to a temporary surcharge on certain returns, effective February 15, 1994. For provisions of former section, *see* the 1993 NMSA 1978 on *NMOneSource.com.*

## 7-2A-8.8. Repealed.

**History:** Laws 1998, ch. 97, § 3; repealed by Laws 2023, ch. 85, § 28.

**ANNOTATIONS**

**Repeals.** — Laws 2023, ch. 85, § 28 repealed 7-2A-8.8 NMSA 1978, as enacted by Laws 1998, ch. 97, § 3, relating to welfare-to-work tax credit, effective July 1, 2023. For provisions of former section, *see* the 2022 NMSA 1978 on *NMOneSource.com*.

## 7-2A-8.9. Tax credit; certain conveyances of real property.

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

appraisal" prepared by a "qualified appraiser", as those terms are defined under applicable federal laws and regulations governing charitable contributions.

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

C. Qualified donations shall include the conveyance in perpetuity of a fee interest in real property or a less-than-fee interest in real property, such as a conservation restriction, preservation restriction, agricultural preservation restriction or watershed preservation restriction, pursuant to the Land Use Easement Act [47-12-1 to 47-12-6 NMSA 1978]; 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 5-9-2 NMSA 1978. The use and protection of the lands, or interests therein, for open space, natural area protection, biodiversity habitat conservation, land preservation, agricultural preservation, historic preservation or similar use or purpose of the property shall be assured in perpetuity.

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

G. To receive a credit pursuant to this section, a person shall apply to the taxation and revenue department on forms and in the manner prescribed by the department. The

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

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

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

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

K. For the purposes of this section:

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

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

**History:** 1978 Comp., § 7-2A-8.9, enacted by Laws 2003, ch. 331, § 8; 2007, ch. 335, § 2.

**ANNOTATIONS**

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

**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 for a conveyance on or after January 1, 2008; and added Subsections F through K.

## 7-2A-9. Taxpayer returns; payment of tax.

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

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

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

**History:** 1978 Comp., § 7-2A-9, enacted by Laws 1981, ch. 37, § 42; 1986, ch. 20, § 47; 1989, ch. 111, § 2; 2015 (1st S.S.), ch. 2, § 4; 2016, ch. 15, § 2.

## ANNOTATIONS

**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, in the second sentence, after "on or before the", deleted "fifteenth day of the third month following the end of each taxable year" and added "due date of the corporation's federal corporate income tax return for the taxable year", and after "pay the tax", deleted "levied" and added "imposed"; and in Subsection C, after "taxable year on or before the", deleted "thirtieth" and added "last", after "day of the", deleted "third", and after "month", deleted "following the end of that 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 2015 (1st S.S.) amendment,** effective September 6, 2015, provided for corporations that are required to file a return or pay a tax pursuant to the Corporate Income and Franchise Tax Act to use electronic media for filing and paying the tax, and set a deadline for filing the tax return and paying the tax; in Subsection A, after "within this state", deleted "and" and added "that is", after "Corporate Income and Franchise Tax Act", deleted "which" and added "and that", and after "prescribed by the secretary.", deleted "Corporations shall file such returns with the department on or before the fifteenth day of the third month following the end of each taxable year. The corporate income tax imposed on corporations under Subsection A of Section 7-2A-3 NMSA 1978 is due and payment is required on or before the fifteenth day of the third month following the end of the taxable year." and added the last sentence; in Subsection B, after the first occurrence of "foreign corporation", added "that is", after the first occurrence of "Corporate Income and Franchise Tax Act", added "that is", after "from this state or", deleted "deriving" and added "that derives", after the second occurrence of "foreign corporation", added "regardless of", after "whether", added "it is", after "active business", deleted "or not, but having or exercising" and added "that has or exercises", after "in this state and", added "that is", after the second occurrence of "Corporate Income and Franchise Tax Act", deleted "is required to" and added "shall", and after "Subsection A", added "or C"; and added Subsection C.

**The 1989 amendment,** effective June 16, 1989, in Subsection A substituted all of the language of the last sentence preceding "is due" for "The tax imposed on corporations under the Corporate Income and Franchise Tax Act", and in Subsection B substituted "is required" for "shall be required" near the middle of the first sentence, and inserted "for a taxable year" near the beginning of the second sentence while adding all of the language of that sentence following "this section".

**Trustees in bankruptcy** who have been appointed to conduct the business of a foreign railroad corporation are liable for the tax, since otherwise the franchise would be dissolved and could not be returned to the corporation when rehabilitation was

complete. *Lowden v. State Corp. Comm'n*, 1938-NMSC-016, 42 N.M. 254, 76 P.2d 1139 (decided predecessor of 53-3-3 NMSA 1978, now repealed).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 71 Am. Jur. 2d State and Local Taxation §§ 266, 589 to 596.

Corporation in hands of receiver, 18 A.L.R. 700, 26 A.L.R. 426.

Forfeiture of charter for nonpayment of franchise taxes, 47 A.L.R. 1288, 97 A.L.R. 477.

Penalty for nonpayment of franchise taxes when due as affected by lack of notice to the taxpayer, 102 A.L.R. 406.

Amount in controversy in case involving franchise taxes, 109 A.L.R. 314.

85 C.J.S. Taxation §§ 1699, 1777 to 1778.

## 7-2A-9.1. Estimated tax due; payment of estimated tax; penalty; exemption.

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

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

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

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

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

B. If Subsection A of this section applies, the amount of estimated tax shall be paid in installments as provided in this subsection. Twenty-five percent of the estimated tax

calculated under Paragraph (1), (2) or (3) of Subsection A of this section or one hundred percent of the estimated tax calculated under Paragraph (4) of Subsection A of this section is due on or before the following dates: the fifteenth day of the fourth month of the taxable year, the fifteenth day of the sixth month of the taxable year, the fifteenth day of the ninth month of the taxable year and the fifteenth day of the twelfth month of the taxable year. Application of this subsection to a taxable year that is a fractional part of a year shall be determined by regulation of the secretary.

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

D. For purposes of this section, the amount of underpayment shall be the excess of the amount of the installment that would be required to be paid if the estimated tax were equal to eighty percent of the tax shown on the return for the taxable year or the amount required by Paragraph (2), (3) or (4) of Subsection A of this section or, if no return was filed, eighty percent of the tax for the taxable year for which the estimated tax is due less the amount, if any, of the installment paid on or before the last date prescribed for payment.

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

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

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

F. For the purposes of this section, the amount of tax deducted and withheld with respect to a taxpayer under the Withholding Tax Act [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 amount of the amount of withheld tax shall be deemed paid on each due date for the applicable taxable year unless the taxpayer establishes the dates on which all amounts were actually withheld, in which case the amounts withheld shall be deemed payments of estimated tax on the dates on which the amounts were actually withheld. The taxpayer may apply the provisions of this subsection separately to amounts withheld under the Withholding Tax Act or the Oil and Gas Proceeds and Pass-Through Entity Withholding

Tax Act. Amounts of tax paid by taxpayers pursuant to Section 7-3A-3 NMSA 1978 shall not be deemed a payment of estimated tax.

**History:** 1978 Comp., § 7-2A-9.1, enacted by Laws 1986, ch. 5, § 1; 1990, ch. 49, § 13; 1992, ch. 78, § 4; 1995, ch. 11, § 7; 1997, ch. 60, § 1; 2003, ch. 86, § 2; 2003, ch. 295, § 1; 2009, ch. 4, § 1; 2010, ch. 53, § 2.

## ANNOTATIONS

**The 2010 amendment,** effective May 19, 2010, in Subsection F, in the first and third sentences, after "Oil and Gas Proceeds", added "and Pass-Through Entity"; and added the last sentence.

**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.

**The 2009 amendment,** effective February 6, 2009, in Subsection B, provided that the payment date for the first quarterly payment of estimated corporate income tax is the fifteenth day of the fourth month of the taxable year; and in Subsection F, provided that the amount of the tax deducted and withheld under the Withholding Tax Act is a payment of estimated tax and added the last sentence.

**Temporary provisions.** — Laws 2009, ch. 4, § 2, provided that for estimated payments due on or before April 15, 2009, pursuant to Section 7-2A-9.1 NMSA 1978, a taxpayer shall remit at least one-eighth of the annual estimated taxes due for the taxable year in lieu of the one-fourth that is required in that section. The remainder of the annual estimated taxes due in the first quarter shall be remitted in addition to the taxpayer's second-quarter payment by June 15, 2009.

**The 2003 amendment,** effective June 20, 2003, in Subsection A substituted "is" for "for such taxable year can reasonably be expected to be" following "applicable credits" near the middle of the first sentence and added "in the current taxable year" at the end of the first sentence; deleted "and if the amount due for that previous taxable year was at least five thousand dollars ($5,000); or" at the end of Paragraph A(2); deleted "the amount due for the taxable year immediately preceding the previous taxable year was at least five thousand dollars ($5,000)" following "a full twelve-month year" in Paragraph A(3); added Paragraph A(4); in Subsection B, substituted "provided in this subsection. Twenty-five percent of the estimated tax calculated under Paragraph (1), (2), or (3) of Subsection A of this section or one hundred percent of the estimated tax calculated under Paragraph (4) of Subsection A of this section is due on or before the following dates" for "follows: twenty-five percent of the estimated tax is due on or before the fifteenth day of the fourth month of the taxable year, another twenty-five percent is due on or before", deleted "another twenty-five percent is due on or before" following "sixth month of the taxable year,", and deleted "the final twenty-five percent is due on or before" following "ninth month of the taxable year and"; inserted "or (4)" following "(3)" near the middle of Subsections C and D.

**The 1997 amendment,** effective June 20, 1997, rewrote Paragraph A(2), and added Paragraph A(3) and made related stylistic changes.

**The 1995 amendment,** effective June 16, 1995, inserted "the greater of five thousand dollars ($5,000)" in Subsection A(2), substituted "the amount required by Paragraph (2) of Subsection A of this section" for "one hundred percent of the tax liability for the previous taxable year" in Subsections C and D, and made a stylistic change.

**The 1992 amendment,** effective May 20, 1992, added the second sentence of Subsection A; and, in Subsection C, substituted "the lesser of eighty percent of the income tax" for "eighty percent of the tax", substituted "Corporate Income and Franchise Tax Act" for "Corporate Income Tax Act", and inserted "or one hundred percent of the tax liability for the previous taxable year".

**The 1990 amendment,** effective May 16, 1990, inserted "after applicable credits" in Subsection A, substituted "secretary" for "director" at the end of Subsection B, redesignated former Paragraphs (1) and (2) of Subsection C as present Subsections D and E, designated former Subparagraphs (a) and (b) of Paragraph (C)(2) as present Paragraphs (1) and (2) of Subsection E; in Paragraph (2) of Subsection E, substituted "this paragraph" for "this subparagraph" and "Subsection D of this section" for "Paragraph (1) of this subsection"; and made a minor stylistic change in Subsection D.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 71 Am. Jur. 2d State and Local Taxation § 596.

85 C.J.S. Taxation §§ 1777 et seq.

## 7-2A-9.2. Limitation on claiming of credits and tax rebates.

A credit or tax rebate provided in the Corporate Income and Franchise Tax Act that is claimed shall be disallowed if the claim for the credit or tax rebate was first made after the end of the third calendar year following the calendar year in which the return upon which the credit or rebate was first claimable was initially due.

**History:** 1978 Comp., § 7-2A-9.2, enacted by Laws 1990, ch. 23, § 2.

**ANNOTATIONS**

**Effective dates.** — Laws 1990, ch. 23 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 16, 1990, 90 days after the adjournment of the legislature.

## 7-2A-10. Information returns.

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

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

**History:** 1978 Comp., § 7-2A-10, enacted by Laws 1981, ch. 37, § 43; 1983, ch. 213, § 14; 1986, ch. 20, § 48.

**ANNOTATIONS**

**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, 1777 et seq.

## 7-2A-11. Accounting methods.

A taxpayer shall use the same accounting methods for reporting income for corporate income tax purposes as are used in reporting income for federal income tax purposes.

**History:** 1978 Comp., § 7-2A-11, enacted by Laws 1981, ch. 37, § 44; 1986, ch. 20, § 49.

**ANNOTATIONS**

**Cross references.** — For deduction of accounting services from gross receipts by corporations, *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 § 1699.

## 7-2A-12. Fiscal years permitted.

Any corporation which files income tax returns under the Internal Revenue Code on the basis of a fiscal year shall report income under the Corporate Income and Franchise Tax Act on the same basis.

**History:** 1978 Comp., § 7-2A-12, enacted by Laws 1981, ch. 37, § 45; 1986, ch. 20, § 50.

**ANNOTATIONS**

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

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 71 Am. Jur. 2d State and Local Taxation §§ 578 to 586.

85 C.J.S. Taxation § 1697.

## 7-2A-13. Administration.

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

**History:** 1978 Comp., § 7-2A-13, enacted by Laws 1981, ch. 37, § 46; 1986, ch. 20, § 51.

## 7-2A-14. Corporate-supported child care; credits allowed.

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

B. A taxpayer that operates a child care facility in New Mexico used primarily by the dependent children of the taxpayer's employees may also claim a credit against the corporate income tax imposed pursuant to the Corporate Income and Franchise Tax Act in an amount equal to thirty percent of the net cost of operating the child care facility for the taxable year. If two or more taxpayers share in the cost of operating a child care facility primarily for the dependent children of the taxpayers' employees, each taxpayer shall be allowed a credit in relation to the taxpayer's share of the cost of operating the child care facility. Each taxpayer's share of the tax credit shall be determined by dividing the employer's share of the net cost of operating the child care facility by the number of children served and multiplying the result by the number of the taxpayer's employees' children served. The credit allowed pursuant to this subsection may be taken only if the child care facility is operated under the authority of a license issued pursuant to the Public Health Act [Chapter 24, Article 1 NMSA 1978] and is operated without profit by the taxpayer. For the purposes of this section, the term "net cost" means the cost of operating a child care facility less any amounts collected as fees for use of the facility, any federal tax credits with respect to the facility or its operation and any other payment or reimbursement from any other source other than the credit provided by this section.

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

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

**History:** Laws 1983, ch. 218, § 1; 1986, ch. 20, § 52; 1995, ch. 11, § 8.

**ANNOTATIONS**

**The 1995 amendment,** effective June 16, 1995, inserted "net of any reimbursement" near the end of Subsection A; and, in Subsection B, rewrote the third sentence which read "The tax credit shall be determined by dividing the net operating cost paid by the employer by the number of children served and multiplying the result by the number of employees' children served", added the final sentence, and made stylistic changes.

**Payments made under salary reduction payroll program.** — Under an employer's salary reduction payroll program by which employees could shelter from income tax a portion of their salary and then use the tax sheltered salary to pay for dependent care expenses, the expenses were "incurred and paid" by the employer, rather than the employees, within the meaning of this section. *Intel Corp. v. Taxation & Revenue Dep't*, 1997-NMCA-005, 122 N.M. 760, 931 P.2d 754.

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

85 C.J.S. Taxation §§ 1719, 1756 to 1759, 1777 to 1778.

## 7-2A-15. Repealed.

**History:** Laws 1994, ch. 115, § 2; repealed by Laws 2023, ch. 85, § 28.

**ANNOTATIONS**

**Repeals.** — Laws 2023, ch. 85, § 28 repealed 7-2A-15 NMSA 1978, as enacted by Laws 1994, ch. 115, § 2, relating to qualified business facility rehabilitation credit, corporate income tax credit, effective July 1, 2023. For provisions of former section, *see* the 2022 NMSA 1978 on *NMOneSource.com*.

## 7-2A-16. Intergovernmental business tax credit.

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

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

C. As used in this section:

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

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

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

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

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

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

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

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

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

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

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

(1) the aggregate amount of tax paid by a taxpayer; or

(2) the amount of the taxpayer's corporate income tax due for the reporting period from the new business's activity conducted on Indian land.

E. The department shall administer and interpret the provisions of this section in accordance with the provisions of the Tax Administration Act [Chapter 7, Article 1 NMSA 1978].

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

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

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

compensation paid to employees employed during the tax period by the taxpayer in all of New Mexico, including Indian land; and

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

**History:** Laws 1997, ch. 58, § 1.

**ANNOTATIONS**

**Effective dates.** — Laws 1997, ch. 58, § 3 made Laws 1997, ch. 58, § 1 effective July 1, 1997.

## 7-2A-17. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1999, ch. 217, § 4 repealed 7-2A-17 NMSA 1978, as enacted by Laws 1999, ch. 217, § 2, relating to the job mentorship tax credit, effective January 1, 2002. For provisions of former section, *see* the 1998 NMSA 1978 on *NMOneSource.com.*

**Compiler's notes.** — For possible carry forward of credit after repeal of section, *see* temporary provisions note under this section on the 1998 NMSA 1978 on *NMOneSource.com.*

## 7-2A-17.1. Job mentorship tax credit.

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

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

year. The employer shall certify that hiring the qualified student does not displace or replace a current employee.

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

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

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

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

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

(3) information required by the secretary that the employee was not also employed in the same taxable year by another New Mexico business qualifying for and claiming a job mentorship tax credit for that employee pursuant to this section or the Income Tax Act [Chapter 7, Article 2 NMSA 1978].

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

G. As used in this section:

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

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

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

**History:** Laws 2003, ch. 400, § 2.

**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.

## 7-2A-18. Repealed.

**History:** Laws 2001, ch. 73, § 2; repealed by Laws 2023, ch. 85, § 28.

**ANNOTATIONS**

**Repeals.** — Laws 2023, ch. 85, § 28 repealed 7-2A-18 NMSA 1978, as enacted by Laws 2001, ch. 73, § 2, relating to credit, certain electronic equipment, effective July 1, 2023. For provisions of former section, *see* the 2022 NMSA 1978 on *NMOneSource.com*.

## 7-2A-19. Renewable energy production tax credit; limitations; definitions; claiming the credit.

A. The tax credit provided in this section may be referred to as the "renewable energy production tax credit". The tax credit provided in this section may not be claimed with respect to the same electricity production for which the renewable energy production tax credit provided in the Income Tax Act [Chapter 7, Article 2 NMSA 1978] has been claimed.

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

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

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

C. The amount of the tax credit shall equal one cent ($.01) per kilowatt-hour of the first four hundred thousand megawatt-hours of electricity produced by the qualified energy generator in the taxable year using a wind- or biomass-derived qualified energy resource; provided that the total amount of tax credits claimed by all taxpayers for a

single qualified energy generator 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 the Income Tax Act will not exceed a total of two million megawatt-hours plus an additional five hundred thousand megawatt-hours produced by qualified energy generators using a solar-light-derived or solar-heat-derived qualified energy resource. Applications shall be considered in the order received. The energy, minerals and natural resources department may estimate the annual power-generating potential of a generating facility for the purposes of this section. The energy, minerals and natural resources department shall issue a certificate to the applicant stating whether the facility is an eligible qualified energy generator and the estimated annual production potential of the generating facility, which shall be the limit of that facility's energy production eligible for the tax credit for the taxable year. The energy, minerals and natural resources department may issue rules governing the procedure for administering the provisions of this subsection and shall report annually to the appropriate interim legislative committee information that will allow the legislative committee to analyze the effectiveness of the renewable energy production tax credit, including the identity of qualified energy generators, the energy production means used, the amount of energy produced by those qualified energy generators and whether any applications could not be approved due to program limits.

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

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

(2) the business entity:

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

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

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

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

(4) the business entity provides notice of the allocation and the taxpayer's interest to the energy, minerals and natural resources department on forms prescribed by that department 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. A taxpayer may claim the renewable energy production tax credit by submitting to the taxation and revenue department the certificate issued by the energy, minerals and natural resources department, pursuant to Subsection G or H of this section, documentation showing the taxpayer's interest in the facility, documentation of the amount of electricity produced by the facility in the taxable year and any other information the taxation and revenue department may require to determine the amount of the tax credit due the taxpayer.

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

year for which the credit is claimed. If the amount of tax credit exceeds the taxpayer's corporate income tax liability for the taxable year:

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

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

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

**History:** Laws 2002, ch. 59, § 1; 2003, ch. 419, § 1; 2005, ch. 104, § 7; 2005, ch. 181, § 1; 2007, ch. 204, § 1; 2021, ch. 65, § 7.

## ANNOTATIONS

**Repeals.** — Laws 2007, ch. 204, § 19 repealed Laws 2005, ch. 104, § 7, effective June 15, 2007.

**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 "department", added "for the taxable year to be claimed", and in Paragraph H(5), after "allocation", added "for the taxable year to be claimed".

**The 2007 amendment,** effective June 15, 2007, provided that the credit may not be claimed with respect to the same electricity production for which the renewable energy production tax credit provided in the Income Tax Act is claimed; provided that a person is eligible for the credit if the qualified energy generator first produces electricity on or before January 1, 2018; added Subsection D and Subparagraphs (a) through (g) of Paragraph (1) of Subsection F; changed the definition of "qualified energy generator" to mean a facility with at least one megawatt generating capacity; provided that an eligible energy generator will not exceed two million megawatt-hours plus an additional five hundred thousand megawatt-hours by solar-light-derived or solar-heat-derived qualified

energy resource; required the department to report information to the legislature that will allow the legislature to analyze the effectiveness of the credit; and added Subsection K.

**Applicability.** — Laws 2007, ch. 204, § 21 provided that Laws 2007, ch. 204, § 1 apply to taxable years beginning on or after January 1, 2008.

**The 2005 amendment,** effective June 17, 2005, in Subsection A, provided that a tax credit provided in this section is the "renewal energy production tax credit"; deleted the former provision of Subsection A, which provide a credit to a taxpayer who owns a qualified energy generator; added Subsection B to provide that a person is eligible for the credit if the person has title to a qualified energy generator or leases property upon which a qualified energy generator operates under authority of a industrial revenue bond; added Subsection C, which provided the amount of the credit; provided in Subsection D that a taxpayer eligible for the credit shall be eligible for the credit for ten years; added Subsection F, which provided that a person who has title to a facility generating electricity from a qualified energy source or that leases a facility pursuant to an industrial revenue bond may request certification of eligibility for the credit; added Subsection G, which provided the criteria by which a taxpayer may be allocated all or a portion of the credit without regard to proportional ownership; added Subsection H, which provided that upon receipt of notice of an allocation of the right to claim all or a portion of the credit, the department shall certify the allocation to the recipient; and in Subsection I, provided that a taxpayer may claim the credit by submitting the certificate issued by the energy, minerals and natural resources department, documentation showing the taxpayer's interest in the facility and the amount of electricity produced to the taxation and revenue department.

**The 2003 amendment,** effective June 20, 2003, added Paragraph B(1); redesignated former Paragraphs B(1) and (2) as Paragraphs B(2) and (3); substituted "ten" for "twenty" following "with at least" in present Paragraph B(2); inserted "a fluidized bed technology or similar low-emissions technology or" following "by means of" in Paragraph B(3); added Subparagraph B(3)(d); and substituted "two million" for "eight hundred thousand" following "will not exceed" in Subsection C.

## 7-2A-20. Repealed.

**History:** Laws 2002, ch. 91, § 2.

**ANNOTATIONS**

**Repeals.** — Laws 2002, ch. 91, § 3, repealed 7-2A-20 NMSA 1978, as enacted by Laws 2002, ch. 91, § 2, relating to a credit for produced water, effective January 1, 2006. For provisions of former section, *see* the 2005 NMSA 1978 on the *NMOneSource.com.*

## 7-2A-21. Sustainable building tax credit.

A. The tax credit provided by this section may be referred to as the "sustainable building tax credit". The sustainable building tax credit shall be available for the construction in New Mexico of a sustainable building, the renovation of an existing building in New Mexico into a sustainable building or the permanent installation of manufactured housing, regardless of where the housing is manufactured, that is a sustainable building. The tax credit provided in this section may not be claimed with respect to the same sustainable building for which the sustainable building tax credit provided in the Income Tax Act [Chapter 7, Article 2 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 that files a corporate income tax return is eligible to be granted a sustainable building tax credit by the department if the taxpayer submits a document issued pursuant to Subsection J of this section with the taxpayer's corporate income tax return.

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

| 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<br>Next 40,000<br>Over 50,000<br>up to 500,000 | $2.50<br>$1.25<br><br>$.50 |
| LEED-EB or CS Gold | First 10,000<br>Next 40,000<br>Over 50,000<br>up to 500,000 | $3.35<br>$1.40<br><br>$.70 |
| LEED-EB or CS Platinum | First 10,000<br>Next 40,000<br>Over 50,000<br>up to 500,000 | $4.40<br>$2.30<br><br>$1.40 |
| LEED-CI Silver | First 10,000<br>Next 40,000<br>Over 50,000<br>up to 500,000 | $1.40<br>$.70<br><br>$.30 |
| LEED-CI Gold | First 10,000<br>Next 40,000<br>Over 50,000<br>up to 500,000 | $1.90<br>$.80<br><br>$.40 |
| LEED-CI Platinum | First 10,000<br>Next 40,000<br>Over 50,000<br>up to 500,000 | $2.50<br>$1.30<br><br>$.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<br>Next 1,000 | $5.00<br>$2.50 |
| LEED-H Gold or Build Green NM Gold | First 2,000<br>Next 1,000 | $6.85<br>$3.40 |

| | | |
|---|---|---|
| LEED-H Platinum or Build Green NM Emerald | First 2,000<br>Next 1,000 | $9.00<br>$4.45 |
| EPA ENERGY STAR Manufactured Housing | Up to 3,000 | $3.00. |

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

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

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

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

this section; provided that applications for sustainable building credits for other sustainable commercial buildings total less than the full amount allocated for tax credits for sustainable commercial buildings.

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

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

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

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

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

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

L. If the sum of all sustainable building tax credits that can be applied to a taxable year for a taxpayer, calculated according to Paragraph (1) or (2) of Subsection K of this

section, exceeds the taxpayer's corporate income tax liability for that taxable year, the excess may be carried forward for a period of up to seven years.

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

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

O. For the purposes of this section:

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

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

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

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

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

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

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

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

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

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

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

(a) a manufactured home or modular home;

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

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

(d) installed consistent with the Manufactured Housing Act [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 systems that: 1) is certified by the United States green building council as LEED-H silver or higher or by build green New Mexico as silver or higher; and 2) has achieved a home energy rating system index of sixty or lower as developed by the residential energy services network; or

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

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

**History:** Laws 2007, ch. 204, § 4; 2009, ch. 59, § 2; 2013, ch. 92, § 2.

## 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, 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 provides for the application of the sustainable building tax credit of less than twenty five in a single taxable year; added Subsections K, L and N; in Paragraph (15) of Subsection O, added the language between "means" and "a building that has been registered"; and deleted former Subparagraph (b) of Paragraph 16 of Subsection O, which was the same language that was added to the definition of "sustainable commercial building" in Paragraph (15) of Subsection O.

**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 added 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 Paragraph I, permitted 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.

**Applicability.** — Laws 2007, ch. 204, § 21 provided that Laws 2007, ch. 204, § 4 apply to taxable years beginning on or after January 1, 2007 through December 31, 2013.

## 7-2A-22. Repealed.

**History:** Laws 2007, ch. 204, § 6; repealed by Laws 2007, ch. 204, § 20.

**ANNOTATIONS**

**Repeals.** — Laws 2007, ch. 204, § 20 repealed 7-2A-22 NMSA 1978, as enacted by Laws 2007, ch. 204, § 6, 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.*

## 7-2A-23. Repealed.

**History:** Laws 2007, ch. 204, § 8; repealed by Laws 2023, ch. 85, § 28.

**ANNOTATIONS**

**Repeals.** — Laws 2023, ch. 85, § 28 repealed 7-2A-23 NMSA 1978, as enacted by Laws 2007, ch. 204, § 8, relating to credit, blended biodiesel fuel, effective July 1, 2023. For provisions of former section, *see* the 2022 NMSA 1978 on *NMOneSource.com*.

## 7-2A-24. Geothermal ground-coupled heat pump tax credit.

A. A taxpayer that files a New Mexico corporate income tax return for a taxable year beginning on or after January 1, 2010 and that purchases and installs after January 1, 2010 but before December 31, 2020 a geothermal ground-coupled heat pump in a property owned by the taxpayer may claim against the taxpayer's corporate income tax liability, and the department may allow, a tax credit of up to thirty percent of the purchase and installation costs of the system. The credit provided in this section may be referred to as the "geothermal ground-coupled heat pump tax credit". The total geothermal ground-coupled heat pump tax credit allowed to a taxpayer shall not exceed nine thousand dollars ($9,000). The department shall allow a geothermal ground-coupled heat pump tax credit only for geothermal ground-coupled heat pumps certified by the energy, minerals and natural resources department.

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

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

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

E. As used in this section, "geothermal ground-coupled heat pump" means a reversible refrigerator device that provides space heating, space cooling, domestic hot water, processed hot water, processed chilled water or any other application where hot air, cool air, hot water or chilled water is required and that utilizes ground water or water circulating through pipes buried in the ground as a condenser in the cooling mode and an evaporator in the heating mode.

**History:** Laws 2009, ch. 271, § 2.

**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.

## 7-2A-25. Repealed.

**History:** Laws 2009, ch. 279, § 2; repealed by Laws 2023, ch. 85, § 28.

**ANNOTATIONS**

**Repeals.** — Laws 2023, ch. 85, § 28 repealed 7-2A-25 NMSA 1978, as enacted by Laws 2009, ch. 279, § 2, relating to advanced energy corporate income tax credit, effective July 1, 2023. For provisions of former section, *see* the 2022 NMSA 1978 on *NMOneSource.com*.

## 7-2A-26. Agricultural biomass corporate income tax credit.

A. A taxpayer that files a New Mexico corporate income tax return for a taxable year beginning on or after January 1, 2011 and ending prior to January 1, 2030 for a dairy or feedlot owned by the taxpayer may claim against the taxpayer's corporate income and franchise tax liability, and the department may allow, a tax credit equal to five dollars ($5.00) per wet ton of agricultural biomass transported from the taxpayer's dairy or feedlot to a facility that uses agricultural biomass to generate electricity or make biocrude or other liquid or gaseous fuel for commercial use. The credit provided in this section may be referred to as the "agricultural biomass corporate income tax credit".

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

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

D. The energy, minerals and natural resources department shall adopt rules establishing procedures to provide certification of transportation of agricultural biomass

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

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

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

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

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

I. As used in this section:

(1) "agricultural biomass" means wet manure meeting specifications established by the energy, minerals and natural resources department from either a dairy or feedlot commercial operation;

(2) "biocrude" means a nonfossil form of energy that can be transported and refined using existing petroleum refining facilities and that is made from biologically derived feedstocks and other agricultural biomass;

(3) "feedlot" means an operation that fattens livestock for market; and

(4) "dairy" means a facility that raises livestock for milk production.

**History:** Laws 2010, ch. 84, § 2; 2020, ch. 20, § 2.

## ANNOTATIONS

**Applicability.** — Laws 2010, ch. 84, § 3 provided that the provisions of Laws 2010, ch. 84, § 2 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 corporate 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 corporate 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 G and H and redesignated the succeeding subsection accordingly.

## 7-2A-27. Repealed.

**History:** Laws 2012, ch. 55, § 2; repealed by Laws 2023, ch. 85, § 28.

**ANNOTATIONS**

**Repeals.** — Laws 2023, ch. 85, § 28 repealed 7-2A-27 NMSA 1978, as enacted by Laws 2012, ch. 55, § 2, relating to veteran employment tax credit, effective July 1, 2023. For provisions of former section, *see* the 2022 NMSA 1978 on *NMOneSource.com*.

## 7-2A-28. 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 Income Tax Act [Chapter 7, Article 2 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 that files a corporate 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 corporate 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 Income Tax Act [Chapter 7, Article 2 NMSA 1978] shall not exceed in any calendar year an aggregate amount of:

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

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

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

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

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 corporate income tax liability for the taxable year for which the credit is approved and the next three subsequent taxable years as needed depending on the amount of credit; or

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

M. If the sum of all 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 corporate income tax liability for that taxable year, the excess may be carried forward for a period of up to seven years.

N. A taxpayer that otherwise qualifies and claims a 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. 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.

P. For the purposes of this section:

(1) "build green New Mexico rating system" means the certification standards adopted by build green New Mexico in November 2014, which include water conservation standards;

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

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

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

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

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

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

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

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

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

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

(a) a manufactured home or modular home;

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

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

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

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

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

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

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

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

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

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

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

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

(c) has reduced energy consumption beginning January 1, 2012, by sixty percent based on the national average for that building type as published by the United States department of energy as substantiated by the United States environmental protection agency target finder energy performance results form, dated no sooner than the schematic design phase of development;

(16) "sustainable residential building" means:

(a) a building used as a single-family residence as registered and certified under the build green New Mexico or LEED-H rating systems that: 1) is certified by the United States green building council as LEED-H silver or higher or by build green New Mexico as silver or higher; 2) has achieved a home energy rating system index of sixty or lower as developed by the residential energy services network; 3) has indoor plumbing fixtures and water-using appliances that, on average, have flow rates equal to or lower than the flow rates required for certification by WaterSense; 4) if landscape area is available at the front of the property, has at least one water line outside the building below the frost line that may be connected to a drip irrigation system; and 5) if landscape area is available at the rear of the property, has at least one water line outside the building below the frost line that may be connected to a drip irrigation system; or

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

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

(18) "WaterSense" means a program created by the federal environmental protection agency that certifies water-using products that meet the environmental protection agency's criteria for efficiency and performance.

**History:** Laws 2015, ch. 130, § 2; 2021, ch. 84, § 3.

**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, made conforming changes due to changing 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, and provided the credit for projects completed prior to April 1, 2023; 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 "Income 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".

## 7-2A-28.1. 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 that is a building owner and files a corporate 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 Income Tax Act [Chapter 7, Article 2 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 that 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 that 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 Income Tax Act [Chapter 7, Article 2 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 corporate income tax liability for the taxable year for which the credit is approved and the next three subsequent taxable years as needed depending on the amount of credit; or

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

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 corporate income tax liability for that taxable year, the excess may be carried forward for a period of up to seven years.

J. A taxpayer that 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. 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.

L. 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.

M. 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 provides for commercial buildings 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, § 4; 2022, ch. 47, § 10.

**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), after "on or after", 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.

## 7-2A-29. Foster youth employment corporate income tax credit.

A. A taxpayer that employs a qualified foster youth in New Mexico is eligible for a credit against the taxpayer's tax liability imposed pursuant to the Corporate Income and Franchise Tax Act in an amount up to one thousand dollars ($1,000) of the gross wages paid to each qualified foster youth by the taxpayer during the taxable year for which the return is filed. A taxpayer that employs a qualified foster youth for less than the full taxable year is eligible for a credit amount equal to one thousand dollars ($1,000) multiplied by the fraction of a full year for which the qualified foster youth was employed. The tax credit provided by this section may be referred to as the "foster youth employment corporate income tax credit".

B. The purpose of the foster youth employment corporate income tax credit is to encourage the employment of individuals who as youth were adjudicated as abused or neglected or who were in the legal custody of the children, youth and families department under the Children's Code [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 corporate income tax credit provided in this section for each taxable year in which the taxpayer employs one or more qualified foster youths; provided that the taxpayer may not claim the foster youth employment corporate income tax credit for any individual qualified foster youth for more than one calendar year from the date of hire.

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

E. The taxpayer shall submit to the department with respect to each employee for whom the foster youth employment corporate income tax credit is claimed information required by the department with respect to the qualified foster youth's employment by the taxpayer during the taxable year for which the foster youth employment corporate income tax credit is claimed, including information establishing that the employee is a qualified foster youth that can be used to determine that the employee was not also employed in the same taxable year by another taxpayer claiming a foster youth employment income or corporate income tax credit for that employee pursuant to this section or the Income Tax Act [Chapter 7, Article 2 NMSA 1978].

F. The department shall:

(1) adopt rules establishing procedures to certify that an employee is a qualified foster youth for purposes of obtaining a foster youth employment corporate income tax credit. The rules shall ensure that not more than one foster youth employment corporate income tax credit per qualified foster youth shall be allowed in a taxable year and that the credits allowed per qualified foster youth are limited to a maximum of one year's employment; and

(2) collaborate with the children, youth and families department, the New Mexico Indian nations, tribes and pueblos and the United States department of the interior bureau of Indian affairs division of human services to establish the certification procedures.

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

H. The department shall compile an annual report on the foster youth employment corporate income tax credit that shall include the number of taxpayers approved by the department to receive the credit, the aggregate amount of credits approved and any other information necessary to evaluate the effectiveness of the credit. The department shall present the annual report to the revenue stabilization and tax policy committee and the legislative finance committee with an analysis of the effectiveness and cost of the tax credit and whether the tax credit is performing the purpose for which it was created.

I. As used in this section, "qualified foster youth" means an individual:

(1) who:

(a) is currently in the legal custody of the children, youth and families department pursuant to the Children's Code or in the legal custody of a New Mexico Indian nation, tribe or pueblo or the United States department of the interior bureau of Indian affairs division of human services; or

(b) within the seven years prior to the taxable year for which the tax credit is claimed, was aged fourteen years or older and was in the legal custody of the children, youth and families department pursuant to the Children's Code or in the legal custody of a New Mexico Indian nation, tribe or pueblo or the United States department of the interior bureau of Indian affairs division of human services;

(2) who works at least twenty hours per week during the taxable year for which the foster youth employment corporate income tax credit is claimed; and

(3) who was not previously employed by the taxpayer prior to the taxable year for which the foster youth employment corporate income tax credit is claimed.

**History:** Laws 2018, ch. 36, § 2.

**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.

## 7-2A-30. Deduction to offset material financial effects of changes in deferred tax amounts due to certain changes made to sections 7-2A-2, 7-2A-3, 7-2A-8.3, 7-4-10 and 7-4-18 NMSA 1978.

A. For each of ten consecutive taxable years beginning on or after January 1, 2026, a filing group subject to the corporate income tax whose members are part of a publicly

traded company may claim a deduction, as provided by Subsection B of this section, from taxable income before net operating losses are deducted.

B. The deduction for each taxable year shall not exceed one-tenth of the amount necessary to offset the aggregate increase in net deferred tax liabilities, the aggregate decrease in net deferred tax assets or an aggregate change from a net deferred tax asset to a net deferred tax liability, as measured under generally accepted accounting principles, that resulted from the changes to Sections 7-2A-2, 7-2A-3, 7-2A-8.3, 7-4-10 and 7-4-18 NMSA 1978 made by this 2019 act; provided that:

(1) the amount of the aggregate change in deferred tax assets and deferred tax liabilities is properly included in the calculation of the deferred tax asset or deferred tax liability reported as part of the consolidated financial statements, as required by the federal Securities Exchange Act of 1934, for the first reporting period affected by the changes to Sections 7-2A-2, 7-2A-3, 7-2A-8.3, 7-4-10 and 7-4-18 NMSA 1978 made by this 2019 act but for the deduction provided by this section; and

(2) if the deduction provided by this section is greater than the taxpayer's net income, any excess amount shall be carried forward and applied as a deduction to the taxpayer's net income in future income years until fully utilized.

C. A filing group shall not claim a deduction pursuant to this section unless the filing group files a preliminary notice with the secretary prior to January 1, 2023 and provides necessary information to show the calculation of the deduction expected to be claimed, as the secretary may require.

**History:** Laws 2019, ch. 270, § 20; 2021, ch. 65, § 8.

**ANNOTATIONS**

**Applicability.** — Laws 2019, ch. 270, § 59 provided that the provisions of Sections 16 through 22 and 58 of Laws 2019, ch. 270 apply to taxable years beginning on or after January 1, 2020.

**The 2021 amendment,** effective July 1, 2021, clarified that the deduction is to offset changes in deferred tax liabilities; and in Subsection B, after "one-tenth of the amount", deleted "of" and added "necessary to offset".

## 7-2A-31. Deduction; income from leasing a liquor license.

A. Prior to January 1, 2026, a taxpayer that is a liquor license lessor and that held the license on June 30, 2021 may claim a deduction from taxable 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. 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 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.

D. 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.

**History:** Laws 2021, ch. 7, § 2.

## ANNOTATIONS

**Effective dates.** — Laws 2021, ch. 7, § 37 made Laws 2021, ch. 7, § 2 effective July 1, 2021.