

TITLE 3 TAXATION
CHAPTER 3 PERSONAL INCOME TAXES
PART 35 NEW SUSTAINABLE BUILDING TAX CREDIT FOR COMMERCIAL BUILDINGS

3.3.35.1 ISSUING AGENCY: Energy, Minerals and Natural Resources Department.
[3.3.35.1 NMAC - N, 12/30/15]

3.3.35.2 SCOPE: 3.3.35 NMAC applies to the application and certification procedures for administration of the new sustainable building tax credit for sustainable commercial buildings.
[3.3.35.2 NMAC - N, 12/30/15]

3.3.35.3 STATUTORY AUTHORITY: 3.3.35 NMAC is established under the authority of Laws 2015, Chapter 130 and Section 9-1-5 NMSA 1978.
[3.3.35.3 NMAC - N, 12/30/15]

3.3.35.4 DURATION: Permanent.
[3.3.35.4 NMAC - N, 12/30/15]

3.3.35.5 EFFECTIVE DATE: December 30, 2015, unless a later date is cited at the end of a section.
[3.3.35.5 NMAC - N, 12/30/15]

3.3.35.6 OBJECTIVE: 3.3.35 NMAC's objective is to establish procedures for administering the program to issue a certificate of eligibility for the new sustainable building tax credit for sustainable commercial buildings.
[3.3.35.6 NMAC - N, 12/30/15]

3.3.35.7 DEFINITIONS:

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

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

C. "Application package" means the documents an applicant submits to the department to apply for a certificate of eligibility for a new sustainable building tax credit.

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

E. "Build green New Mexico rating system" means the certification standards adopted by build green New Mexico in November 2014, which includes water conservation standards.

F. "Building project" means a new construction or renovation project that will result in one or more sustainable commercial buildings.

G. "Building type" means the primary use of a building or section of a building as defined in target finder.

H. "Certificate of eligibility" means the document, with a unique identifying number that specifies the amount and taxable year and specific physical address for the approved new sustainable building tax credit.

I. "Certification level" means one of the following:

(1) LEED-H silver or build green New Mexico silver;

(2) LEED-H gold or build green New Mexico gold; or

(3) LEED-H platinum or build green New Mexico emerald.

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

K. "Division director" means the director of the department's energy conservation and management division.

L. "Energy reduction requirements means":

(1) for a sustainable commercial building that is not a multifamily dwelling unit means beginning January 1, 2012, a sixty percent energy reduction based on the national average for that building type as published by the United States (U.S.) department of energy;

- (2) for a multifamily dwelling unit means that it has achieved a home energy rating system index of 60 or lower as developed by the residential energy services network.
- M.** “HERS” means home energy rating system as developed by RESNET.
- N.** “HERS index” means a relative energy use index, where 100 represents the energy use of a home built to a HERS reference house and zero indicates that the proposed home uses no net purchased energy.
- O.** “LEED” means the most current mandatory leadership in energy and environmental design green building rating system guidelines developed and adopted by the U.S. green building council.
- P.** “LEED certification” means the U.S. green building council’s verification that a building project has met certain prerequisites and performance benchmarks or credits within each category of a LEED rating system resulting in the issuance of a certification document.
- Q.** “LEED-CI” means the LEED rating system for commercial interiors.
- R.** “LEED-CS” means the LEED rating system for the core and shell of buildings.
- S.** “LEED-EB” means the LEED rating system for existing buildings.
- T.** “LEED-H” means the LEED rating system for homes at the time of project registration.
- U.** “LEED-NC” means the LEED rating system for new buildings and major renovations.
- V.** “LEED rating system” means one of the following:
- (1) LEED-CI;
 - (2) LEED-CS;
 - (3) LEED-EB;
 - (4) LEED-H; or
 - (5) LEED-NC.
- W.** “LEED registration” means the notification to the U.S. green building council that a project is pursuing LEED certification.
- X.** “New sustainable building tax credit” for the purposes of 3.3.35 NMAC means the personal income tax credit the state of New Mexico issues to an applicant for a sustainable commercial building.
- Y.** “Person” does not include state, local government, public school districts or tribal agencies.
- Z.** “Qualified occupied square footage” means the occupied spaces of the building as determined by the U.S. green building council for those buildings obtaining LEED certification or the administrators of the build green New Mexico rating system for those homes obtaining build green New Mexico certification; or the U.S. environmental protection agency for energy star-certified manufactured homes.
- AA.** “RESNET” means the residential energy services network, an industry not-for-profit membership corporation and national standards-making body for building energy efficiency rating systems.
- BB.** “Solar market development tax credit” means the personal income tax credit the state of New Mexico issues to a taxpayer for a solar energy system the department has certified.
- CC.** “Sustainable commercial building” means:
- (1) a multifamily dwelling unit, as registered and certified under the LEED-H or build green New Mexico rating system, that is certified by the U.S. green building council as LEED-H silver or higher or by build green New Mexico as silver or higher and has achieved a home energy rating system index of 60 or lower as developed by the residential energy services network; or
 - (2) a building that has been registered and certified under the LEED-NC, LEED-EB, LEED-CS or LEED-CI rating system and that:
 - (a) is certified by the U.S. green building council at LEED silver or higher;
 - (b) achieves any prerequisite for and at least one point related to commissioning under LEED “energy and atmosphere”, if included in the applicable rating system; and
 - (c) has reduced energy consumption beginning January 1, 2012, by sixty percent based on the national average for that building type as published by the U.S. department of energy as substantiated by the U.S. environmental protection agency target finder energy performance results form, dated no sooner than the schematic design phase of development.
- DD.** “Target finder” means the web-based program developed by the U.S. environmental protection agency to establish an energy goal in kilo British thermal units per square foot per year for predetermined building types.
- EE.** “Taxable year” means the calendar year or fiscal year upon the basis of which the net income is computed under the Income Tax Act, 7-2-2 et seq. NMSA 1978.
- FF.** “Taxpayer” means any individual subject to the tax imposed by the Income Tax Act, 7-2-1 et seq. NMSA 1978.
- GG.** “Taxpayer identification number” means the taxpayer’s nine digit social security number.

HH. “Tribal” means of, belonging to or created by a federally recognized Indian nation, tribe or pueblo.

II. “Verifier” means an entity the department approves to provide certification for homes under the build green New Mexico or LEED-H rating systems.
[3.3.35.7 NMAC - N, 12/30/15]

3.3.35.8 GENERAL PROVISIONS:

A. A person who is the owner of a building in New Mexico that has been constructed or renovated to be a sustainable commercial building and that receives certification on or after the effective date of the adoption of 3.4.22 NMAC may receive a certificate of eligibility for a new sustainable building tax credit.

B. The total amount in a calendar year of the new sustainable building tax credit available pursuant to the Income Tax Act and the Corporate Income and Franchise Tax Act to taxpayers owning sustainable commercial buildings is limited to \$1,250,000. When the \$1,250,000 limit for sustainable commercial buildings is reached, based on all certificates of eligibility the department has issued, the department shall:

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

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

C. The department may issue certificates of eligibility to applicants who meet the requirements for the new sustainable commercial buildings tax credit in a taxable year when applications for the new sustainable commercial buildings tax credits exceed the annual cap and applications for the new sustainable residential building or manufactured housing tax credits are under the annual cap for that type of sustainable building by March 1 of any year in which the tax credit is in effect.

D. In the event of a discrepancy between a requirement of 3.3.35 NMAC and an existing New Mexico taxation and revenue department rule promulgated before 3.3.35 NMAC’s adoption, the existing rule governs.

E. All notices and application required to be submitted to the department under 3.3.35 NMAC shall be submitted to the energy conservation and management division of the department.

[3.3.35.8 NMAC - N, 12/30/15]

3.3.35.9 VERIFIER’S ELIGIBILITY:

A. The department reviews the qualification for verifiers of the build green New Mexico or LEED certifications, which shall be provided annually to the department, based on the following criteria:

- (1) the verifier is independent from the builder or owner that may apply for certification;
- (2) the verifier has adequate staff and expertise to provide certification services, including:
 - (a) experience in green building services;
 - (b) ability to enlist and serve builders and provide training, consulting and other

guidance as necessary;

and

- (c) a method of auditing the certification process to maintain adequate stringency;

and

- (d) ability to administer the program and report on the certifications, audits and other relevant information the department may request;

- (3) the verifier can identify the geographic area being served; and

(4) the verifier provides a statement that expresses a commitment to promoting energy efficient green building with the highest standard of excellence.

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

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

D. The department may rescind an existing verifier’s approval if it determines that the above criteria are not being met. The department notifies the verifier of the reasons for disapproving or rescinding eligibility.

(1) The department shall notify the verifier of the proposed rescission in writing. The verifier has the right to request in writing review of the decision to rescind the verifier’s approval. The verifier shall file a request for review within 20 calendar days after the department’s notice is sent. The verifier shall address the

request to the division director and include the reasons that the department should not rescind the verifier's approval. The division director shall consider the request. The division director may hold a hearing and appoint a hearing officer to conduct the hearing. The division director shall send a final decision to the verifier within 20 calendar days after receiving the request or the date the hearing is held.

(2) The verifier may appeal in writing to the department's secretary a division director's decision. The notice of appeal shall include the reasons that the secretary should overturn the division director's decision. The secretary shall consider any appeal from a division director's decision. The verifier shall file the appeal and the reasons for the appeal with the secretary within 14 calendar days of the division director's issuance of the decision. The secretary may hold a hearing and appoint a hearing officer to conduct the hearing. The secretary shall send a final decision to the verifier within 20 calendar days after receiving the request or the date the hearing concludes.

[3.3.35.9 NMAC - N, 12/30/15]

3.3.35.10 APPLICATION FOR THE NEW SUSTAINABLE BUILDING TAX CREDIT:

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

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

C. An applicant shall submit a complete application package to the department no later than March 1 of the taxable year for which the applicant seeks the new sustainable building tax credit. If an applicant does not submit a complete application package by March 1, any remaining new sustainable commercial building tax credit funds under the cap may be used in that taxable year for completed new sustainable residential building or manufactured housing applications. The department may review application packages it receives after that date for the subsequent calendar year if the tax credit remains in effect.

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

- (1) the applicant's name, mailing address, telephone number and taxpayer identification number;
- (2) the address of the sustainable commercial building, including the property's legal description;
- (3) whether the applicant was the building owner at time of certification or a subsequent purchaser;
- (4) the rating system under which the sustainable commercial building was certified;
- (5) the certification level achieved;
- (6) for sustainable commercial buildings that are not multifamily dwelling units, the kilo British thermal units per square foot per year anticipated as demonstrated in the energy model submitted for LEED certification, broken out by all energy sources and including the percent of use for each energy source;
- (7) for sustainable commercial buildings that are not multifamily dwelling units, revised documentation of the energy reduction requirement, if the percent of use of any energy source for the energy model is different from the original energy target documentation by more than ten percent;
- (8) the qualified occupied square footage of the sustainable commercial building;
- (9) the date of certification;
- (10) for multifamily dwelling units, the HERS index; and
- (11) a statement signed and dated by the applicant or an authorized representative of the applicant, which may be a form of electronic signature if approved by the department, asserting that:
 - (a) all information provided in the application package is true and correct to the best of the applicant's knowledge under penalty of perjury;
 - (b) all inputs for the energy reduction requirements are the same as the inputs for the energy model;

- (c) if an onsite solar system is used to meet the requirements of either the certification level applied for in the new sustainable building tax credit or the energy reduction requirement achieved, the applicant has not applied for and will not apply for a solar market development tax credit;
- (d) applicant understands that there are annual caps in place for the new sustainable building tax credit;
- (e) applicant understands that the department must verify the documentation submitted in the application package before the department issues a certificate of eligibility for a new sustainable building tax credit; and
- (f) applicant understands that the department issues a certificate of eligibility for the tax year in which the new sustainable commercial building was certified or if the new sustainable building tax credit's annual cap has been reached for the next tax year in which funds are available.

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

- (1) a copy of a current warranty deed, property tax bill or ground lease in the applicant's name as of or after the date of certification for the address or legal description of the sustainable commercial building;
- (2) a copy of the rating system certification form;
- (3) a copy of the final LEED project info or project summary that shows the building's square footage;
- (4) a copy of the final certification review LEED checklist that shows the LEED credits achieved or the build green New Mexico final certification review checklist;
- (5) for sustainable commercial buildings that are not multifamily dwelling units, a copy of the final LEED optimize energy performance template or templates, signed by a New Mexico licensed design professional, that the applicant submitted for LEED certification including the results of the energy model that shows the kilo British thermal units per square foot per year for the sustainable commercial building;
- (6) for sustainable commercial building that are not multifamily dwelling units, revised documentation of the energy reduction requirement, if the percent of use of any energy source for the energy model is different from the original energy target documentation by more than ten percent;
- (7) a copy of the final LEED commissioning template, if available under the applicable LEED rating system;
- (8) for multifamily dwelling units, a copy of a HERS certificate from a RESNET (or a rating network that has the same standards as RESNET) accredited HERS provider, using software RESNET lists as eligible for certification of the federal tax credit, showing the HERS index achieved, if applicable; and
- (9) other information the department needs to review the building project for the new sustainable building tax credit.

[3.3.35.10 NMAC - N, 12/30/15]

3.3.35.11 APPLICATION REVIEW PROCESS:

- A.** The department considers applications in the order received, according to the day they are received, but not the time of day.
- B.** The department approves or disapproves an application package following the receipt of the complete application package.
- C.** The department reviews the application package to calculate the maximum new sustainable building tax credit, check accuracy of the applicant's documentation and determine whether the department issues a certificate of eligibility for the new sustainable building tax credit.
- D.** If an onsite solar system is used to meet the requirements of either the certification level applied for in the new sustainable building tax credit or the energy reduction requirement achieved, the department verifies that no person has applied for a solar market development tax credit for that solar system. If the department finds that a solar market development tax credit has been approved for that solar system, the department shall disapprove the application for the new sustainable building tax credit. The applicant may submit a revised application package to the department that excludes electricity projected to be generated by the solar system. The department places the resubmitted application in the review schedule as if it were a new application.
- E.** If the department finds that the application package meets the requirements and funds for a new sustainable building tax credit are available, the department issues the certificate of eligibility for a new sustainable building tax credit. If funds for a new sustainable building tax credit are partially available or not available, the department issues a certificate of eligibility for any amount that is available and a certificate of eligibility for the

balance for the next taxable year in which funds are available, until the last taxable year when the new sustainable building tax credit is in effect. The department provides approval through written notification to the applicant upon the application's completed review. The notification shall include the taxpayer's contact information, taxpayer identification number, certificate of eligibility number or numbers, the rating system certification level awarded to the building, the amount of qualified occupied square footage in the building, the new sustainable building tax credit amount or amounts and the new sustainable building tax credit's taxable year or years.

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

[3.3.35.11 NMAC - N, 12/30/15]

3.3.35.12 VERIFICATION OF THE ALTERNATIVE METHOD USED FOR THE ENERGY REDUCTION REQUIREMENT:

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

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

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

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

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

D. The applicant may request that the department obtain the advice of a volunteer review committee of three or more New Mexico registered architects and New Mexico licensed professional mechanical and electrical engineers, chosen by the department, on their assessment of the alternative method, at which time the department may:

- (1) reconsider the decision and accept the alternative method;
- (2) recommend a revised alternative method; or
- (3) reaffirm the rejection of the alternative method.

[3.3.35.12 NMAC - N, 12/30/15]

3.3.35.13 CALCULATING THE TAX CREDIT:

A. The department calculates the maximum new sustainable building tax credit for sustainable commercial buildings that are not multifamily dwelling units based on the qualified occupied square footage of the sustainable commercial building, the LEED rating system under which the applicant achieved LEED certification and the certification level the applicant achieved. The tax credit for various square footages is specified in the chart below:

LEED-NC silver:	
first 10,000 square feet	equals the qualified square footage less than or equal to 10,000 multiplied by \$3.50; plus
next 40,000 square feet	the qualified square footage greater than 10,000 and less than or equal to 50,000 multiplied by \$1.75; plus
next 450,000 square feet	the qualified square footage greater than 50,000 and less than or equal to 500,000 multiplied by \$.70
LEED-NC gold:	
first 10,000 square	equals the qualified square footage less than or equal to 10,000 multiplied by \$4.75; plus
next 40,000 square feet	the qualified square footage greater than 10,000 and less than or equal to 50,000 multiplied by \$2.00; plus

next 450,000 square feet	the qualified square footage greater than 50,000 and less than or equal to 500,000 multiplied by \$1.00
LEED-NC platinum:	
first 10,000 square feet	equals the qualified square footage less than or equal to 10,000 multiplied by \$6.25; plus
next 40,000 square feet	the qualified square footage greater than 10,000 and less than or equal to 50,000 multiplied by \$3.25; plus
next 450,000 square feet	the qualified square footage greater than 50,000 and less than or equal to 500,000 multiplied by \$2.00
LEED-EB OR LEED-CS silver:	
first 10,000 square feet	equals the qualified square footage less than or equal to 10,000 multiplied by \$2.50; plus
next 40,000 square feet	the qualified square footage greater than 10,000 and less than or equal to 50,000 multiplied by \$1.25; plus
next 450,000 square feet	the qualified square footage greater than 50,000 and less than or equal to 500,000 multiplied by \$.50
LEED-EB OR LEED-CS gold:	
first 10,000 square feet	equals the qualified square footage less than or equal to 10,000 multiplied by \$3.35; plus
next 40,000 square feet	the qualified square footage greater than 10,000 and less than or equal to 50,000 multiplied by \$1.40; plus
next 450,000 square feet	the qualified square footage greater than 50,000 and less than or equal to 500,000 multiplied by \$.70
LEED-EB OR LEED-CS platinum:	
first 10,000 square feet	equals the qualified square footage less than or equal to 10,000 multiplied by \$4.40; plus
next 40,000 square feet	the qualified square footage greater than 10,000 and less than or equal to 50,000 multiplied by \$2.30; plus
next 450,000 square feet	the qualified square footage greater than 50,000 and less than or equal to 500,000 multiplied by \$1.40
LEED-CI silver:	
first 10,000 square feet	equals the qualified square footage less than or equal to 10,000 multiplied by \$1.40; plus
next 40,000 square feet	the qualified square footage greater than 10,000 and less than or equal to 50,000 multiplied by \$.70; plus
next 450,000 square feet	the qualified square footage greater than 50,000 and less than or equal to 500,000 multiplied by \$.30
LEED-CI gold:	
first 10,000 square feet	equals the qualified square footage less than or equal to 10,000 multiplied by \$1.90; plus
next 40,000 square feet	the qualified square footage greater than 10,000 and less than or equal to 50,000 multiplied by \$.80; plus
next 450,000 square feet	the qualified square footage greater than 50,000 and less than or equal to 500,000 multiplied by \$.40
LEED-CI platinum:	
first 10,000 square feet	equals the qualified square footage less than or equal to 10,000 multiplied by \$2.50; plus
next 40,000 square feet	the qualified square footage greater than 10,000 and less than or equal to 50,000 multiplied by \$1.30; plus
next 450,000 square feet	the qualified square footage greater than 50,000 and less than or equal to 500,000 multiplied by \$.80

B. The department calculates the maximum new sustainable building tax credit for multifamily dwelling units based on the qualified occupied square footage of the sustainable building, the rating system under which the applicant achieved certification and the certification level the applicant achieved. The tax credit for various square footages is specified in the chart below:

LEED-H silver or build green New Mexico silver:	
up to 2,000 square feet	equals the qualified square footage less than or equal to 2,000 multiplied by \$3.00
LEED-H gold or build green New Mexico gold:	
up to 2,000 square feet	equals the qualified square footage less than or equal to 2,000 multiplied by \$4.50
LEED-H platinum or build green New Mexico emerald:	
up to 2,000 square feet	equals the qualified square footage less than or equal to 2,000 multiplied by \$6.50

C. The taxation and revenue department makes the final determination of the amount of the new sustainable building tax credit.

[3.3.35.13 NMAC - N, 12/30/15]

3.3.35.14 CLAIMING THE STATE TAX CREDIT: To claim the new sustainable building tax credit for a given year, an applicant shall submit all certificates of eligibility to the taxation and revenue department prior to the end of that calendar year, along with a completed form provided by the taxation and revenue department, and any other information the taxation and revenue department requires.

[3.3.35.14 NMAC - N, 12/30/15]

HISTORY OF 3.3.35 NMAC: [RESERVED]