

TITLE 3: TAXATION
CHAPTER 3: PERSONAL INCOME TAXES
PART 13: TAX REBATES AND CREDITS

3.3.13.1 **ISSUING AGENCY:** Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630
[1/15/97; 3.3.13.1 NMAC - Rn, 3 NMAC 3.13.1, 12/14/00]

3.3.13.2 **SCOPE:** This part applies to each resident of New Mexico and to each nonresident employed or engaged in the transaction of business in, into or from New Mexico or deriving any income from any property or employment in New Mexico.
[1/15/97; 3.3.13.2 NMAC - Rn, 3 NMAC 3.13.2, 12/14/00]

3.3.13.3 **STATUTORY AUTHORITY:** Section 9-11-6.2 NMSA 1978.
[1/15/97; 3.3.13.3 NMAC - Rn, 3 NMAC 3.13.3, 12/14/00]

3.3.13.4 **DURATION:** Permanent.
[1/15/97; 3.3.13.4 NMAC - Rn, 3 NMAC 3.13.4, 12/14/00]

3.3.13.5 **EFFECTIVE DATE:** 1/15/97, unless a later date is cited at the end of a section, in which case the later date is the effective date.
[1/15/97; 3.3.13.5 NMAC - Rn & A, 3 NMAC 3.13.5, 12/14/00]

3.3.13.6 **OBJECTIVE:** The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Income Tax Act.
[1/15/97; 3.3.13.6 NMAC - Rn, 3 NMAC 3.13.6, 12/14/00]

3.3.13.7 **DEFINITIONS:** [Reserved]
[1/15/97; 3.3.13.7 NMAC - Rn, 3 NMAC 3.13.7, 12/14/00]

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

A. Rental component of nursing home charges.

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

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

(3) For the purposes of this subsection (3.3.13.8A NMAC), the term "long-term residential care facility" means any facility which provides room, board and health care services to persons residing in the facility for more than a temporary period of time. "Long-term residential care facility" does not include any general or other hospital unless the hospital maintains a separate area for purposes of providing long-term room, board and health care services for persons not requiring admission to the hospital.

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

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

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

and

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

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

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

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

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

C. **Period of gainful employment.**

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

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

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

3.3.13.10 **CREDIT FOR PRESERVATION OF CULTURAL PROPERTY**

A. **Cultural property credit defined.** The preservation of cultural property credit is a credit against a taxpayer's New Mexico personal income tax due for amounts expended for the restoration, rehabilitation and preservation of cultural property owned by the taxpayer and listed on the official New Mexico register of cultural properties as those terms are defined in 1 of the cultural properties review committee Rule 84-1. Any taxpayer who files a New Mexico personal income tax return and who is not a dependent of another individual may claim a credit in an amount equal to one-half of the cost of the restoration, rehabilitation or preservation of the cultural property, not to exceed a maximum of twenty-five thousand dollars (\$25,000).

B. **Filing requirements.**

(1) The claim for the cultural property credit shall consist of a copy of the letter of certification, a copy of Form B, part 2 from the cultural properties review committee and a copy of the invoices or a statement from the contractor(s) showing the cost incurred for the year of the claim.

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

C. **S-corporation claim for cultural property credit.**

(1) A shareholder in a small business corporation may claim the shareholder's pro rata share of the cultural property credit against New Mexico personal income tax due. The total aggregate credit for all shareholders and other owners of a property shall not exceed an amount equal to one-half the cost of restoration, rehabilitation or preservation or twenty-five thousand dollars (\$25,000) for a single restoration, rehabilitation or preservation project for any cultural property.

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

D. **Partnership claim for cultural property credit.**

(1) A partner in a partnership or joint venture may claim the partner's pro rata share of the cultural property credit against New Mexico personal income tax due. The total aggregate credit for all partners shall not exceed an amount equal to one-half the cost of restoration, rehabilitation or preservation or twenty-five thousand dollars (\$25,000) for a single restoration, rehabilitation or preservation project for any cultural property.

(2) A partner shall claim the cultural property credit in the same manner as specified in 3.3.13.10B NMAC and shall, in addition, provide a schedule listing the names, addresses and social security numbers or federal employer identification numbers of all partners in the partnership or joint venture, the pro rata share of the credit of

each partner and the New Mexico tax identification number under which the partnership or joint venture is filing CRS-1 Forms.

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

3.3.13.11 **QUALIFIED BUSINESS FACILITY REHABILITATION CREDIT**

A. **No qualified business facility rehabilitation credit allowed for cultural or historic properties.**

No qualified business facility rehabilitation credit will be allowed for any qualified business facility that is also:

- (1) a building listed on the official New Mexico register of cultural properties as those terms are defined in section 1 of the cultural properties review committee Rule 84-1; or
- (2) a building listed on the national register or determined to be contributing to a national register district.

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

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

- (1) architectural and engineering services related directly to the restoration, rehabilitation or renovation project;
- (2) inspection reports, such as structural conditions or environmental inspections;
- (3) building permits and fees;
- (4) abatement programs, such as asbestos abatement or lead-based paint abatement;
- (5) all direct materials costs used in the project, including energy upgrading materials such as insulation or interior storm windows;
- (6) all direct labor costs used in the project, except for salary paid to the owner for the owner's own labor;
- (7) all direct materials and labor costs incurred for compliance with the Americans With Disabilities Act;
- (8) rental of equipment necessary for project completion, such as tools and machinery;
- (9) purchase of tools where the life expectancy of the tool is not longer than the life of the project, such as paint brushes and drop cloths;
- (10) upgrade of utilities to meet current codes, including plumbing, mechanical and electrical;
- (11) upgrade of utilities connections, including water, gas, electricity and telecommunications;
- (12) exterior lighting, security lighting, light fixtures, and alarm systems;
- (13) repair or replacement of existing bathroom plumbing fixtures;
- (14) New Mexico gross receipts and compensating taxes; and
- (15) liability, fire, and workers' compensation insurance premiums during the time of work on the project.

D. **Costs not qualifying for the credit.** The following costs may not be included in determining the qualified business facility rehabilitation credit:

- (1) all acquisition costs of the qualified business facility, such as surveys, appraisals, loan fees, commissions, legal fees;
- (2) architectural, engineering and planning services related to expansion of or additions to a building if the expansion or addition increases the usable square footage of the building by more than ten percent;
- (3) accounting fees;
- (4) office supplies, bank fees and charges, film and similar expenditures;
- (5) automotive repairs, maintenance and gasoline;
- (6) furnishings, including furniture, floor coverings and carpeting, wall coverings, window coverings, and linens;
- (7) purchase of tools where the life expectancy of the tool is longer than the life of the project, such as ladders, drills, and saws;
- (8) landscaping;
- (9) bathroom accessories;
- (10) kitchen appliances, cabinets, and accessories;
- (11) meals and food;
- (12) membership fees or dues;

- (13) property damaged at or stolen from a project site; and
- (14) routine maintenance including, but not limited to, cleaning, painting, minor repairs and periodic upkeep except where these items are part of an initial overall restoration, rehabilitation or renovation project.

E. "Single project" defined.

(1) Except as otherwise provided in this subsection (3.3.13.11E NMAC), credit for restoring, rehabilitating or renovating a qualified business facility may be claimed only once for a building, although the actual period of time during which that restoration, rehabilitation or renovation occurs may be as long as three consecutive, calendar years.

(2) If a qualified business facility has been restored, rehabilitated or renovated and has been put into service by a person in the manufacturing, distribution or service industry immediately following the restoration, rehabilitation or renovation, the person claims and is granted a credit under either Section 7-2-18.4 or Section 7-2A-15 NMSA 1978 and the qualified business facility is subsequently taken out of service by that person and remains vacant for twenty-four consecutive calendar months, a credit may be claimed for additional costs of restoration, rehabilitation or renovation for that building, provided all other requirements of Section 7-2-18.4 NMSA 1978 are met.

F. Prior approval required to qualify for credit.

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

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

G. Filing requirements.

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

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

H. Record retention requirements.

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

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

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

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

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

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

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

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

K. Total claimable in a year may exceed \$50,000.

(1) No individual may claim nor may the department allow a credit in excess of \$50,000 for any single project. An individual, however, may be involved in several different approved projects. If the individual's share of allowable credits from the several projects exceeds \$50,000, the individual may claim and the department may allow an aggregate credit amount which exceeds \$50,000.

(2) Example: An individual owns a qualified business facility and is also a shareholder in an S-corporation and in a limited liability company, both of which also own qualified business facilities. All three undertake restoration, renovation or rehabilitation projects on their respective buildings within the same year. The individual earns credits of \$40,000 from the individual's own building, and \$20,000 and \$12,000 shares from the other two. The individual may claim a credit equal to the sum of the individual's share from the three projects, or \$72,000. If, however, the \$72,000 exceeded the individual's income tax liability before application of this credit, then the excess would have to be carried into succeeding taxable years.

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

[2/9/95, 1/15/97; 3.3.13.11 NMAC - Rn & A, 3 NMAC 3.13.11, 12/14/00]