

Guidance Related to the Sustainable Building Tax Credit

Sections 7-2A-21 and 7-2-18.19 NMSA 1978, originally enacted in 2007, provide the sustainable building tax credit. Sections 7-2A-28 and 7-2-18.29 NMSA 1978, provide the new sustainable building tax credit, enacted in 2015 and applicable to tax years beginning on or after January 1, 2017. This bulletin will provide guidance related to the Department's handling of the credits going forward, and address questions related to the credits that have arisen from taxpayers.

Credit Transferability

Can a credit be split and transferred to in parts to multiple taxpayers?

No, a credit must be transferred in its entirety. Splitting the credit and transferring the pieces is not allowed because the statutes allow transfer or assignment of the "eligibility document."

How many times can an eligibility document be transferred prior to any taxpayer claiming the credit?

There is no limit on the number of times the initial eligibility document may be transferred prior to a taxpayer claiming the credit against a return. Please note that there is a statutory requirement that the parties to the transfer must notify the Department within 10 days of any transfer.

Can a carryforward amount that results from a taxpayer claiming the credit be transferred?

No, any remaining credit amount that exists after a taxpayer has claimed the credit against their personal income tax or corporate income tax liability cannot be transferred under any circumstances.

How does a credit earned by a pass-through entity (PTE) get allocated among its owners?

A credit earned by a PTE may not be split and transferred to the owners. Instead, section II of the credit application allows PTEs to identify their owners and their respective ownership percentages. When that section is correctly completed, a separate credit eligibility letter will be issued to each owner. The credit award amount on each letter will reflect that owner's distributive share of the overall credit earned by the PTE. The individual PTE owners can then transfer their credit if they choose to.

General Claim and Administration Process

Can a credit that has been claimed by a taxpayer be unclaimed?

Yes, a taxpayer may amend the return on which they claimed the credit to "unclaim" that entire credit. The credit may then be transferred to another taxpayer. In order to then claim the transferred credit, the purchaser of that credit must amend its return for the first eligible tax year as indicated on the eligibility certificate. All amended returns must be completed within the appropriate statute of limitations.

New Mexico Taxation and Revenue Department
P.O. Box 630
Santa Fe, NM 87504-0630

What is considered the governing year for purposes of determining the applicable law for claiming the credit?

The first eligible year on the eligibility certificate is the governing year.

What is the first eligible year to claim the credit for a fiscal year taxpayer?

The first eligible year would be the fiscal year beginning in the year stated on the eligibility certificate.

If you have any additional questions about the sustainable building tax credit that are not addressed in this bulletin, please contact Bobbie Marquez at (505) 827-0792.

Visit the Department's web site at <http://www.tax.newmexico.gov> for forms and instructions.

ALBUQUERQUE (505) 841-6200

Taxation and Revenue Department
5301 Central NE
P.O. Box 8485
Albuquerque, NM 87198-8485

LAS CRUCES (575) 524-6225

Taxation and Revenue Department
2540 S. El Paseo Bldg. #2
P.O. Box 607
Las Cruces, NM 88004-0607

SANTA FE (505) 827-0951

Taxation and Revenue Department
Manuel Lujan Sr. Bldg.
1200 S. St. Francis Dr.
P.O. Box 5374
Santa Fe, NM 87502-5374

ALAMOGORDO (575) 437-2322

SILVER CITY (575) 388-4403
(above calls transfer to Las Cruces office)

ROSWELL (575) 624-6065

Taxation and Revenue Department
400 Pennsylvania Ave., Suite 200
P.O. Box 1557
Roswell, NM 88202-1557

FARMINGTON (505) 325-5049

Taxation and Revenue Department
3501 E. Main St., Suite N
P.O. Box 479
Farmington, NM 87499-0479

Main Switchboard: (505) 827-0700 (Santa Fe)

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This information is as accurate as possible at time of publication. Subsequent legislation, new state regulations and case law may affect its accuracy. For the latest information please check the Taxation and Revenue Department's web site at www.tax.newmexico.gov.

This publication provides instructions or general information to the taxpayer. It does not constitute a regulation or ruling as defined under Section 7-1-60, *New Mexico Statutes Annotated, 1978*. Taxpayers and preparers are responsible for being aware of New Mexico tax laws and rules. Consult the Department directly if you have questions or concerns about information provided in this Bulletin.