

ABOUT THIS CREDIT

The purpose of the new sustainable building tax credit is to encourage the construction of sustainable buildings and the renovation of existing buildings into sustainable buildings. For tax years beginning on or after January 1, 2017, and ending on or before December 31, 2026, the new sustainable building tax credit is 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 for the permanent installation of manufactured housing in New Mexico, regardless of where the housing is manufactured, that is a sustainable building.

The credit is available to the building owner of residential and commercial buildings, after the construction, installation, or renovation of the sustainable building is complete. To be eligible, the building owner must obtain a certificate of eligibility issued by the Energy, Minerals and Natural Resources Department (EMNRD), and then obtain approval from the New Mexico Taxation and Revenue Department (TRD). To claim the credit, the taxpayer must submit TRD-approval with the taxpayer's income tax return.

To qualify for the new sustainable building tax credit, the building must have achieved a silver or higher certification level as described next.

For Sustainable Commercial Buildings

The credit calculation is based on the certification level the building achieved in the LEED green building rating system and the amount of qualified occupied square footage in the building. See the commercial building rate chart on the last page of these instructions.

For Sustainable Residential Buildings

The credit calculation is based on the LEED-H or the Build Green NM rating system certification level and the amount of qualified occupied square footage in the building.

Manufactured housing must meet the rating system levels set by the United States Environmental Protection Agency for ENERGY STAR-certified manufactured homes. See the residential building rate chart on the last page of these instructions.

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 new sustainable building tax credit, unless a solar market development tax credit has not been claimed with respect

to that system and the building owner and the taxpayer claiming the new sustainable building tax credit certify that such a tax credit will not be claimed with respect to that system.

Obtaining the Certificate of Eligibility

The owner of the building must first obtain a certificate of eligibility for the new sustainable building tax credit from EMNRD after the construction, installation, or renovation of sustainable building is complete. EMNRD determines whether the building meets the requirements as a sustainable residential or sustainable commercial building and verifies the certification level awarded for the building.

If approved, EMNRD issues the building owner a certificate of eligibility. The certificate includes 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 is eligible. The certificate also includes the first eligible tax year that the allowable credit can be claimed.

If the certification level for a sustainable residential building is awarded on or after January 1, 2017, EMNRD 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.

NOTE: Buildings owned by state or local governments, public school districts, or tribal agencies do not qualify as a sustainable building for purposes of the new sustainable building tax credit.

To apply for a certificate of eligibility, contact the EMNRD at (505) 476-3320, or write to Energy, Minerals and Natural Resources Department, 1220 So. St. Francis Dr., Santa Fe, NM 87505.

Annual Limits Established for Approving Applications

EMNRD may issue a certificate of eligibility only if the total amount of new sustainable building tax credits issued in a calendar year exceeds an aggregate amount of:

- (1) \$1,250,000 with respect to sustainable commercial buildings;
- (2) \$3,375,000 with respect to sustainable residential buildings that are not manufactured housing, and
- (3) \$375,000 with respect to sustainable residential

buildings that are manufactured housing. Applications are considered in the order they are received.

If for any tax year, EMNRD determines that the applications for new sustainable building tax credits for any type of sustainable building, (1), (2) or (3) above, are less than the aggregate limit for that type of sustainable building for that tax year, EMNRD 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 tax year. Any excess not used in a tax year shall not be carried forward to subsequent tax years.

Tax Credit Forms

Before you can claim a credit, the Taxation and Revenue Department must give you approval to receive the credit. The following list shows all the forms for new sustainable building tax credits:

- RPD-41382, *New Sustainable Building Tax Credit Approval*
- RPD-41384, *Notice of Transfer of New Sustainable Building Tax Credit*
- RPD-41383, *New Sustainable Building Tax Credit Claim Form*

Requesting the Approval from TRD

After EMNRD issues the certificate of eligibility, the owner of the building must promptly complete Form RPD-41382, *New Sustainable Building Tax Credit Approval*, and submit it to TRD with a copy of the certificate of eligibility and any other information that TRD may require to determine the amount of the tax credit for which the building owner is eligible. If all requirements have been complied with, TRD approves the credit and returns the approved form to the owner or holder. The new sustainable building tax credit allowed an eligible owner of a qualifying sustainable building may be claimed against the owner's personal or corporate income tax liability or may be sold, exchanged, or otherwise transferred to another taxpayer. See **Sale, Exchange, or Transfer of the Tax Credit**, for more information.

If the qualifying sustainable building is owned by a partnership or other business association, the owner may pass the credit to its member(s), partners(s), shareholder(s), or beneficiary(ies) by completing Section II, and submitting a Form RPD-41382, *New Sustainable Building Tax Credit Approval*, for each member, partner, shareholder, or beneficiary. Members, partners, and beneficiaries may claim a credit only in proportion to their interest in the partnership or association, and are issued an approval for their portion of the credit. The total

credit claimed in the aggregate by all members, partners, and beneficiaries of the partnership or other business 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. If TRD denies the approval request, Form RPD-41382 is returned to the building owner with an explanation.

Sale, Exchange, or Transfer of the Tax Credit

When a holder or owner receives TRD approval, the credit may be sold, exchanged, or otherwise transferred. Form RPD-41384, *Notice of Transfer of New Sustainable Building Tax Credit*, must be used to report to TRD a transfer of approved new sustainable building tax credit. Notice must be provided to TRD within 10 days of a sale, exchange, or other transfer. TRD issues the new holder an approval for the credit transfer, a new credit number, and instructions for applying the credit to personal or corporate income tax due.

The amount of the credit allowed to a holder who sells, exchanges or transfers their credit to another taxpayer, may not be split or divided between taxpayers. The total amount of credit allowed, as shown on the TRD-approved document provided to the holder, must either be claimed or otherwise transferred by the holder. The TRD-approved document will be either Form RPD-41382, *New Sustainable Building Tax Credit Approval*, or a TRD-approved Form RPD-41384, *Notice of Transfer of New Sustainable Building Tax Credit*, depending on the how the previous holder received TRD approval for the credit.

If, however, the holder is a partnership or other business association that passes the credit to its owners, each owner may claim a credit only in proportion to that owner's interest in the partnership or other business association. The total credit claimed by all owners may not exceed the amount of the credit that could have been claimed by the holder.

Note: Once a credit is claimed by a holder or owner, the carryforward may not be further sold, exchanged or transferred.

An original building owner that is a partnership or other business association may pass TRD-approved credit to its owners, by completing Sections I and II of Form RPD-41382, *New Sustainable Building Tax Credit Approval*, and submitting a Form RPD-41327 for each owner.

How You Can Claim the Approved Credit

Holders or owners can claim the approved new sustainable building tax credit against their personal or corporate income tax liability for the tax year subject to the rules described next. If the amount of the credit available in a tax year exceeds the liability for that tax year, holders or

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owners can carryforward the excess for up to seven years.

The holder or owner must first claim the credit in the year they are eligible to claim the credit or the portion of the credit before the carryforward can be claimed. This is true even if no tax is due.

If the total approved amount of new sustainable building tax credit for a taxpayer in a tax year represented by the approval issued by TRD is:

- less than \$100,000, a maximum of \$25,000 shall be applied against the taxpayer's income tax liability for the tax year for which the credit is approved and the next three subsequent tax years as needed depending upon the amount of the credit, or
- \$100,000 or more, increments of 25% of the total credit amount in each of the four tax years, including the tax year for which the credit is approved and the three subsequent tax years, shall be applied against the taxpayer's income tax liability.

If the sum of all new sustainable building tax credits that can be claimed in a tax year for a taxpayer, exceeds the taxpayer's income tax liability for that tax year, the excess may be carried forward for a period of up to seven years.

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

Effectiveness and Cost of Credit

Beginning in 2019 and every three years thereafter that the tax credit is in effect, TRD shall compile and present 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.

COMPLETING THE CREDIT APPROVAL FORM

Follow these instructions to complete each section of RPD-41382, *New Sustainable Building Tax Credit Approval*.

Section I. Complete the name block with the information for the eligible building owner.

Required to receive the credit:

- Mark in box to certify the statement
- Owner's signature and date of signature
- Attach certificate issued from EMNRD

Section II. Complete this section if the owner of the

qualifying sustainable building is a partnership or other business association passing all or a portion of the credit to a member, partner, shareholder, or beneficiary. If there is more than one member, partner, shareholder, or beneficiary, submit a Form RPD-41382 for each. The building owner, and if applicable, the holder, if transferred to a member, partner, shareholder or beneficiary, must certify that the solar market development tax credit, pursuant to Section 7-2-18.14 NMSA 1978, has not and will not be claimed for any solar thermal system or photovoltaic system installed in the sustainable building as a component of qualification for the rating system certification level used in determining eligibility for the new sustainable building tax credit.

Required to transfer the credit to members, partners, shareholders or beneficiaries:

- Complete Section II
- Mark in box to certify the statement
- Holder's signature and date of signature

Section III. TRD completes this section of the form, approving, partially approving, or disapproving the new sustainable building tax credit.

Attach a copy of the certificate of eligibility issued by EMNRD to RPD-41382, *New Sustainable Building Tax Credit Approval*, and mail to: Taxation and Revenue Department, Edit Error, P.O. Box 5418, Santa Fe, NM 87502-5418. For assistance completing this form, call (505) 827-0792.

IMPORTANT DEFINITIONS

Refer to the following definitions to understand the meanings of terms used in the sustainable building forms and instructions.

Build Green NM rating system means the certification standards adopted by build green New Mexico in November 2014, which include water conservation standards;

LEED means the most current Leadership in energy and environmental design green building rating system guidelines developed and adopted by the U. S. Green Building Council.

LEED-CI means the LEED rating system for commercial interiors.

LEED-CS means the LEED rating system for the core and shell of buildings.

LEED-EB means the LEED rating system for existing buildings.

LEED gold means the rating in compliance with, or exceeding, the second highest rating awarded by the LEED certification process.

LEED-H means the LEED rating system for homes.

LEED-NC means the LEED rating system for new buildings and major renovations.

LEED platinum means the rating in compliance with, or exceeding, the highest rating awarded by the LEED certification process.

LEED silver means the rating in compliance with, or exceeding, the third highest rating awarded by the LEED certification process.

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 36 feet by 24 feet and a total area of at least 864 square feet;
- c. constructed in a factory to the standards of the U.S. 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.

Person does not include state, local government, public school district, or tribal agencies.

Qualified occupied square footage means the occupied spaces of the building as determined by:

- a. the U.S. Green Building Council for those buildings obtaining LEED certification,
- b. the administrators of the Build Green NM rating system for those homes obtaining Build Green NM certification, and
- c. the U.S. Environmental Protection Agency (EPA) for ENERGY STAR-certified manufactured homes.

Sustainable building means either a sustainable commercial building or a sustainable residential building.

Sustainable commercial building means a multifamily dwelling unit, as registered and certified under the LEED-H or Build Green NM rating system, that is certified by the

U.S. Green Building Council as LEED-H silver or higher or by Build Green NM 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 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 60% 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.

Sustainable residential building means

- a. a building used as a single-family residence as registered and certified under the Build Green NM or LEED-H rating system that:
 1. is certified by the U.S. Green Building Council as LEED-H silver or higher or by Build Green NM as silver or higher, and
 2. has achieved a home energy rating system index of 60 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 U.S. EPA.

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

WaterSense means a program created by the federal EPA that certifies water-using products that meet the EPAs criteria for efficiency and performance.

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The amount of the new sustainable building tax credit that may be claimed with respect to a sustainable **commercial** building is 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 in the following chart:

Commercial Building Rating System/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	\$ 0.70
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	\$ 0.50
LEED-EB or CS Gold	First 10,000	\$ 3.35
	Next 40,000	\$ 1.40
	Over 50,000 up to 500,000	\$ 0.70
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	\$ 0.70
	Over 50,000 up to 500,000	\$ 0.30
LEED-CI Gold	First 10,000	\$ 1.90
	Next 40,000	\$ 0.80
	Over 50,000 up to 500,000	\$ 0.40
LEED-CI Platinum	First 10,000	\$ 2.50
	Next 40,000	\$ 1.30
	Over 50,000 up to 500,000	\$ 0.80

The amount of the new sustainable building tax credit that may be claimed with respect to a sustainable **residential** building is calculated based on the amount of qualified occupied square footage in the building, as indicated in the following chart:

Residential Building 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
EPA ENERGY STAR Manufactured Housing	Up to 2,000	\$3.00