

TITLE 3 TAXATION
CHAPTER 4 CORPORATE INCOME TAXES
PART 19 CERTIFICATION FOR TAX CREDIT FOR GEOTHERMAL GROUND-COUPLED
HEAT PUMPS

3.4.19.1 ISSUING AGENCY: Energy, Minerals and Natural Resources Department.
[3.4.19.1 NMAC - N, 9/15/2010]

3.4.19.2 SCOPE: 3.4.19 NMAC applies to the application and certification procedures for administration of the tax credit for geothermal ground-coupled heat pumps.
[3.4.19.2 NMAC - N, 9/15/2010]

3.4.19.3 STATUTORY AUTHORITY: 3.4.19 NMAC is established under the authority of NMSA 1978, Section 7-2A-24 and NMSA 1978, Section 9-1-5.
[3.4.19.3 NMAC - N, 9/15/2010]

3.4.19.4 DURATION: Permanent.
[3.4.19.4 NMAC - N, 9/15/2010]

3.4.19.5 EFFECTIVE DATE: 9/15/2010, unless a later date is cited at the end of a section.
[3.4.19.5 NMAC - N, 9/15/2010]

3.4.19.6 OBJECTIVE: 3.4.19 NMAC's objective is to establish procedures for administering the program to issue a certificate of eligibility for the tax credit for geothermal ground-coupled heat pumps.
[3.4.19.6 NMAC - N, 9/15/2010]

3.4.19.7 DEFINITIONS:

A. "Annual cap" means the annual aggregate amount of the geothermal ground-coupled heat pump tax credit available to individual and corporate taxpayers.

B. "Applicant" means a taxpayer or taxpayers that own a geothermal ground-coupled heat pump system in New Mexico and that desires to have the department issue a certificate of eligibility for the geothermal ground-coupled heat pump tax credit.

C. "Application package" means the application document and all attachments that an applicant submits to the division to receive a certificate of eligibility for a geothermal ground-coupled heat pump tax credit.

D. "Certificate of eligibility" means the document, with a unique system certification number, that specifies the amount and taxable year for the approved geothermal ground-coupled heat pump tax credit.

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

F. "Division" means the energy, minerals and natural resources department's energy conservation and management division.

G. "Geothermal ground-coupled heat pump system" 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.

H. "Geothermal ground-coupled heat pump tax credit" means the corporate income tax credit that the taxation and revenue department issues to an applicant for a geothermal ground-coupled heat pump system.

I. "System certification number" means the unique number issued by the department that identifies the certified geothermal ground-coupled heat pump system.

J. "Taxpayer" means a corporation as defined by NMSA 1978, Section 7-2A-2, subject to the tax imposed by the Corporate Income and Franchise Tax Act, NMSA 1978, Section 7-2A-1 *et seq.*

K. "Taxpayer identification number" means an 11-digit number the taxation and revenue department issues that indicates that the taxpayer is registered with the taxation and revenue department to pay gross receipts and compensating taxes.

L. "Tax credit" means the New Mexico state tax credit for geothermal ground-coupled heat pumps as described in 3.4.19 NMAC.

[3.4.19.7 NMAC - N, 9/15/2010]

3.4.19.8 GENERAL PROVISIONS:

A. Only a taxpayer who is the owner of a geothermal ground-coupled heat pump system that is purchased and is installed in a residence, business or agricultural enterprise in New Mexico on or after January 1, 2010, but before December 31, 2020 may receive a certificate of eligibility for a tax credit.

B. Only one application package shall be filed per geothermal ground-coupled heat pump system. If more than one taxpayer owns an interest in the property where the geothermal ground-coupled heat pump system is installed as a member of a partnership or other business association, a taxpayer may only claim a tax credit in proportion to that taxpayer's interest in the partnership or association. The application package shall specify the interest each taxpayer has in the property. In the event that there is more than one taxpayer that owns an interest in the property where the geothermal ground-coupled heat pump system is installed:

- (1) each such taxpayer applying for a tax credit must be identified as an applicant on the application package;
- (2) each such taxpayer applying for a tax credit must provide the required taxpayer information as required by 3.4.19.9 NMAC and the application form;
- (3) each such taxpayer applying for a tax credit must sign the application; and
- (4) the department shall issue one certificate of eligibility per taxpayer that reflects the amount of the tax credit to which the taxpayer is entitled in accordance with the taxpayer's interest in the property, as set forth in the application.

C. 3.4.19 NMAC applies to geothermal ground-coupled heat pump systems for corporate income tax only; the rules for personal income tax geothermal ground-coupled heat pump system tax credit are at 3.3.32 NMAC.

D. The tax credit certificate may be issued for up to 30 percent of the purchase and installation costs of the geothermal ground-coupled heat pump system but may not exceed \$9,000.

E. The annual cap is \$2,000,000. When the \$2,000,000 annual cap is reached, based on all certificates of eligibility the department has issued, the department shall:

- (1) if part of the eligible 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 next subsequent tax year in which such tax credits are available; except
- (2) if no tax credit funds are available, issue a certificate of eligibility for the next subsequent tax year in which such credits are available, except for the last taxable year when the tax credit is in effect.

[3.4.19.8 NMAC - N, 9/15/2010]

3.4.19.9 APPLICATION:

A. To apply for the tax credit an applicant shall submit a complete application package to the division. An applicant may obtain the tax credit application form and system installation form from the division to submit as part of the package.

B. An application package shall include a completed tax credit application form and written attachments for a geothermal ground-coupled heat pump system. The applicant shall submit the tax credit application form together with all attachments required as a complete application package. An applicant shall submit one application package for each geothermal ground-coupled heat pump system. All material submitted in the application package shall be provided on 8½-inch x 11-inch paper.

- C.** The completed application form shall include the following information:
- (1) the taxpayer's name, mailing address, telephone number and taxpayer identification number;
 - (2) the address where the geothermal ground-coupled heat pump system is located;
 - (3) the geothermal ground-coupled heat pump system's type and description;
 - (4) the date the geothermal ground-coupled heat pump system started continuous operation;
 - (5) the installer's name, address, telephone number, license category and license number;
 - (6) the net cost of equipment, materials and labor of the geothermal ground-coupled heat pump system, excluding the expenses and income listed in 3.4.19.13 NMAC;
 - (7) a statement, signed and dated by the applicant, which signature may be electronic if approved by the department, agreeing that:
 - (a) all information provided in the application package is true and correct;
 - (b) applicant has read the certification requirements contained in 3.4.19 NMAC;
 - (c) applicant understands that there are annual aggregate tax credit limits in place for geothermal ground-coupled heat pump systems;

- (d) applicant understands that the department must approve the application package before the applicant is eligible for a tax credit;
- (e) applicant agrees to make changes the department requires to the geothermal ground-coupled heat pump system for compliance with 3.4.19 NMAC; and
- (f) to ensure compliance with 3.4.19 NMAC, applicant agrees to allow the division or its authorized representative to inspect the geothermal ground-coupled heat pump system that is described in the application package at any time after the submission of the application package with not less than five business days notice to the applicant; and
- (8) a system certification number the division assigns to the application.
- D.** The application package shall meet 3.4.19 NMAC's requirements and be materially complete.
- E.** The application package shall include the following information provided as attachments:
 - (1) a copy of the most recent property tax bill to the taxpayer for the residence where the geothermal ground-coupled heat pump system is located;
 - (2) a copy of the invoice of itemized equipment and labor costs for the geothermal ground-coupled heat pump system;
 - (3) a copy of the geothermal ground-coupled heat pump system's design schematic and technical specifications as described in 3.4.19 NMAC;
 - (4) a photograph of the geothermal ground-coupled heat pump system after installation is completed;
 - (5) a completed system installation form;
 - (6) a completed taxpayer and installer statement, with information about the geothermal ground-coupled heat pump that includes:
 - (a) manufacturer or supplier of system components and the system components' model numbers;
 - (b) number of well borings (if applicable);
 - (c) a description of horizontal trenching (if applicable);
 - (d) a description of a water source system component (if applicable);
 - (7) if the system was installed using vertical or horizontal directional boreholes, the applicant shall provide the following information:
 - (a) drilling operator;
 - (b) office of the state engineer exploratory permit number and approval date (if required);
 - (c) drilling method;
 - (d) borehole diameter;
 - (e) number of boreholes drilled;
 - (f) general description of subsurface geology or copies of drillers logs;
 - (g) depth of the boreholes;
 - (h) distance between boreholes;
 - (i) depth to ground water (indicate if ground water not encountered);
 - (j) whether the system is an "open" or "closed" loop design; and
 - (8) if the system was installed using horizontal trenching, the applicant shall provide the following information:
 - (a) length, width and depth of the trench or trenches; and
 - (b) general description of subsurface geology.
- F.** The completed system installation form shall include the following information:
 - (1) printed name of the taxpayer who is identified on the application form;
 - (2) printed name, title and telephone number of the installer who signs the system installation form;
 - (3) printed name, title and telephone number of the building code authority's authorized representative, if applicable, who approves the system installation form;
 - (4) date on which the geothermal ground-coupled heat pump system installation was complete and ready to operate;
 - (5) a statement that the installer has signed and dated, which may be a form of electronic signature if approved by the department, certifying that:
 - (a) the geothermal ground-coupled heat pump system was installed in full compliance with all applicable federal, state and local government statutes or ordinances, rules or regulations and codes and standards that are in effect at the time of installation;
 - (b) the installer has read 3.4.19 NMAC's certification requirements;

(c) the installed geothermal ground-coupled heat pump system will work properly with regular maintenance; and

(d) the installer provided written operations and maintenance instructions to the applicant and posted a one-page summary of these instructions in a sheltered accessible location acceptable to the taxpayer and that is near or at the geothermal ground-coupled heat pump system's components;

(6) documentation of the total geothermal ground-coupled heat pump system size.

G. The application form shall request that the applicant provide the following optional information:

(1) taxpayer's email address; and

(2) contractor's email address.

H. The application form shall include optional selections where the applicant can indicate interest in allowing the department to take the following actions. Selection of such options by the applicant shall not create in the department an obligation to take such action:

(1) adding energy monitoring equipment to the geothermal ground-coupled heat pump system;

(2) conducting an analysis of geothermal ground-coupled heat pump system operation and performance; or

(3) conducting an analysis of taxpayer's utility bill records.

[3.4.19.9 NMAC – N, 9/15/2010]

3.4.19.10 APPLICATION REVIEW PROCESS:

A. The department shall consider applications in the order received, according to the day they are received, but not the time of day. If the department approves applications received on the same day and the applications would exceed the annual cap, then the department will divide the available tax credit among those applications on a prorated system cost basis.

B. The division shall review the application package to calculate the tax credit and check accuracy of the applicant's documentation and shall determine whether the department certifies the geothermal ground-coupled heat pump system.

C. If an application package fails to meet a requirement or is materially incomplete, the department shall disapprove the application. 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 division shall place the resubmitted application in the review schedule as if it were a new application.

D. If the division finds that the application package meets 3.4.19 NMAC's requirements and a tax credit is available, the department shall certify the applicant's geothermal ground-coupled heat pump system and documents the taxpayer as eligible for a tax credit. If a tax credit is not available in the taxable year of certification of the geothermal ground-coupled heat pump system submitted in the application package, the division shall place the taxpayer on a waiting list for inclusion in the following taxable year, if a tax credit remains available. The department shall provide approval through written notification to the applicant. The notification shall include the taxpayer's contact information, taxpayer identification number, system certification number, net system cost eligible for the tax credit, the tax credit amount and, if applicable waiting list status.

E. The division shall report to the taxation and revenue department the information required to verify, process and distribute each tax credit by providing a copy of the department's approval notification.

[3.4.19.10 NMAC - N, 9/15/2010]

3.4.19.11 SAFETY, CODES AND STANDARDS:

A. Geothermal ground-coupled heat pump systems that the department may certify shall meet the following minimum requirements:

(1) compliance with the latest adopted version of all applicable federal, state and local government statutes or ordinances, rules or regulations and codes and standards that are in effect at the time that the applicant submits the application package including design, permitting and installation in full compliance with all applicable provisions of the New Mexico Plumbing Code (14.8.2 NMAC), the New Mexico Mechanical Codes (14.9.2 - 5 NMAC), the New Mexico General Construction Building Codes (14.7.2 - 8 NMAC) and any amendments to these codes adopted by a political subdivision that has validly exercised its planning and permitting authority under NMSA 1978, Sections 3-17-6 and 3-18-6; and

(2) compliance with all applicable utility company or heating fuel vendor requirements, if the system being served with a geothermal ground-coupled heat pump system is also served by utility electricity or a heating fuel.

B. The application package shall include the following information concerning building codes:

(1) a statement that the building code authority's authorized representative has signed and dated, which may be a form of electronic signature if approved by the department, that the geothermal ground-coupled heat pump system was installed in full compliance with all applicable codes; or

(2) if the applicant is unable to obtain a signed and dated statement from the building code authority's authorized representative on the system installation form, then the applicant may provide one of the following instead:

(a) a photograph or copy of the permit tag clearly identifying the building code authority's authorized representative's signature, the date and the permit number;

(b) an official document from the building code authority that includes the:

(i) agency's name;

(ii) authorized representative's name, title, telephone number and signature;

(iii) date of authorized representative's signature; and

(iv) permit number; or

(c) a web-based application the building code authority approves.

[3.4.19.11 NMAC - N, 9/15/2010]

3.4.19.12 SYSTEM APPLICATIONS AND LISTS OF ELIGIBLE COMPONENTS:

A. Geothermal ground-coupled heat pump systems that the department may certify shall meet the following requirements:

(1) be made of new equipment, components and materials;

(2) have a written minimum two year warranty provided by the contractor on parts, equipment and labor with the following exceptions;

(a) the warranty provided by the contractor on each specific piece of equipment shall not exceed the duration and conditions of the warranty provided by the manufacturer of the equipment against defects in materials and workmanship; and

(b) the owner of the geothermal ground-coupled heat pump system may bear the actual cost of shipping the product for the repair and replacement;

(3) be a complete system that collects and distributes geothermal energy to the residence, business or agricultural enterprise in New Mexico that it serves; and

(4) be a minimum one-ton system size.

B. Geothermal ground-coupled heat pump systems or their portions that the department shall not certify are as follows:

(1) a system or portion of a system that would be present if the geothermal ground-coupled heat pump system was not installed;

(2) a system that is not connected to a structure or foundation and does not serve a permanent end use energy load or is not permanently located in New Mexico;

(3) a system not serving an end use energy load; or

(4) a system or portion of a system that replaces a system or portion of a system the department has certified in a previous application for a tax credit.

C. System components and installation processes that the department may include in the cost calculation and certify include:

(1) the system applications of geothermal space heating, geothermal air heating, geothermal process heating, geothermal space cooling or combinations of geothermal system applications, 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.

(2) collectors;

(3) pumps;

(4) fans;

(5) storage tanks;

(6) buffer tanks;

(7) expansion tanks;

(8) expansion valves;

(9) valves;

(10) "txv" valves;

(11) three-way valves;

- (12) refrigerant compressors;
- (13) chill water tanks;
- (14) refrigerant reversing valves;
- (15) controllers;
- (16) heat exchangers;
- (17) compressors;
- (18) compressor gas;
- (19) flow center circulators;
- (20) tubing;
- (21) tubing u-bend connections;
- (22) tubing connections and fittings;
- (23) manifolds;
- (24) supply headers;
- (25) expansion metering devices;
- (26) desuperheaters;
- (27) hot water tanks;
- (28) heat exchange refrigerant;
- (29) reverse return headers;
- (30) thermostats;
- (31) evaporators;
- (32) borehole grout;
- (33) borehole backfill sand or other medium;
- (34) turnarounds; and
- (35) air handlers;
- (36) above-ground fluid coolers;
- (37) thermal conductivity testing; and
- (38) all materials and costs associated with vertical well drilling and horizontal trenching including well casing and tubing.

well casing and tubing.

[3.4.19.12 NMAC - N, 9/15/2010]

3.4.19.13 CALCULATING THE GEOTHERMAL GROUND-COUPLED HEAT PUMP SYSTEM COST:

A. The cost of a geothermal ground-coupled heat pump system the department certifies shall be the cost of acquiring the system but shall not include the following:

- (1) expenses, including but not limited to:
 - (a) unpaid labor or the applicant's labor;
 - (b) unpaid equipment or materials;
 - (c) land costs or property taxes;
 - (d) costs of structural, surface protection and other functions in building elements that would be included in building construction if a geothermal ground-coupled heat pump system were not installed;
 - (e) mortgage, lease or rental costs of the residence, business or agricultural enterprise;
 - (f) legal and court costs;
 - (g) research fees or patent search fees;
 - (h) fees for use permits or variances;
 - (i) membership fees;
 - (j) financing costs or loan interest;
 - (k) marketing, promotional or advertising costs;
 - (l) repair, operating or maintenance costs;
 - (m) extended warranty costs;
 - (n) system visual barrier costs;
 - (o) adjacent structure modification costs;
 - (p) vegetation maintenance costs; and
- (2) income, including:
 - (a) payments the installer or other parties provide that reduce the system cost, including rebates, discounts and refunds with the exception of federal, state and local government and utility company incentives;

(b) services, benefits or material goods the installer or other parties provide by the same or separate contract, whether written or verbal; and

(c) other financial incentives provided for geothermal ground-coupled heat pump system installation, if applicable.

B. The division shall make the final determination of the net cost that the department certifies is eligible for a tax credit.

[3.4.19.13 NMAC - N, 9/15/2010]

3.4.19.14 CLAIMING THE TAX CREDIT:

A. To claim the tax credit, a taxpayer owning a geothermal ground-coupled heat pump system that the department has certified shall submit to the taxation and revenue department a claim, which shall consist of the certificate of eligibility the department issued to the taxpayer, a completed claim form the taxation and revenue department has approved and any other information the taxation and revenue department requires.

B. If the amount of tax credit claimed exceeds the taxpayer's corporate income tax liability, the taxpayer may carry the excess forward for up to 10 consecutive taxable years.

[3.4.19.14 NMAC - N, 9/15/2010]

HISTORY OF 3.4.19 NMAC:

Pre-NMAC History: None.

History of Repealed Material: [RESERVED]