

**SUSTAINABLE BUILDING TAX CREDIT
INSTRUCTIONS**

About This Credit: A tax credit is available for the construction in New Mexico of a sustainable building or for the renovation of an existing building in New Mexico into a sustainable building or the permanent installation of manufactured housing, regardless of where the housing is manufactured, that is a sustainable building. The credit is available for residential and commercial buildings, after the construction, installation or renovation of the sustainable building is complete. To qualify for the sustainable building tax credit, the building must have achieved a silver or higher certification level in the LEED green building rating system or the build green New Mexico rating system. See the definitions of a sustainable residential and commercial building for complete details. After being awarded the required certification level, the building owner applies to the Energy Conservation and Management Division of the Energy, Minerals and Natural Resources Department (EMNRD) for a certificate of eligibility. EMNRD determines whether the building meets the requirements as a sustainable building and issues the building owner a certificate of eligibility, subject to limitations described in the next section. The amount of the sustainable building tax credit that may be claimed with respect to a sustainable commercial and residential building will be calculated based on the certification level the building has achieved and the amount of qualified occupied square footage in the building. See the rate charts on the last page of these instructions.

For Residential Sustainable Buildings: To qualify for the sustainable building tax credit, the certification level for a sustainable residential building must be awarded on or after January 1, 2007, and the building owner must be: (1) the owner of the sustainable residential building at the time the certification level for the building in the LEED green building rating system or the build green New Mexico rating system is awarded; or (2) the subsequent purchaser of a sustainable residential building with respect to which no tax credit has been previously claimed.

Obtaining the Certificate of Eligibility: The owner of the building must first obtain a certificate of eligibility for the sustainable building tax credit from EMNRD after the construction, installation or renovation of sustainable building is complete. EMNRD determines whether the building owner meets the requirements as a sustainable residential or sustainable commercial building and verifies the certification level awarded for the building. If approved, EMNRD will issue the building owner a certificate of eligibility. The certificate will include 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 would be eligible. 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 sustainable building tax credit. To apply for a certificate of eligibility, contact the Energy Efficiency and Green Building Administrator at (505) 476-3254, or write to Energy, Minerals, and Natural Resources Department, 1220 So. St. Francis Dr., Santa Fe, New Mexico 87505.

Annual Limits Established for Approving Applications: EMNRD cannot issue a certificate of eligibility if the total amount of sustainable building tax credits issued in a calendar year exceeds an aggregate amount of \$5,000,000 with respect to sustainable commercial buildings and an aggregate amount of \$5,000,000 with respect to sustainable residential buildings, provided that no more than \$1,250,000 of the aggregate amount with respect to sustainable residential buildings shall be for manufactured housing. Applications are considered in the order received. If for any taxable year, EMNRD determines that the applications for sustainable building tax credits with respect to sustainable residential buildings for that taxable year exceed the aggregate limit above, EMNRD may issue certificates of eligibility under the aggregate annual limit for sustainable commercial buildings to building owners of multifamily dwelling units that meet the requirements of EMNRD and of the sustainable building tax credit; provided that applications for sustainable building credits for other sustainable commercial buildings total less than the full amount allocated for tax credits for sustainable commercial buildings.

Requesting the Tax Credit Approval from TRD: Once the certificate of eligibility is issued by EMNRD, the owner of the building must promptly complete Form RPD-41327, *Sustainable Building Tax Credit Approval*, and submit the form to the Taxation and Revenue Department (TRD) with a copy of the certificate of eligibility. If all requirements have been complied with, TRD will approve the credit and return the approved form to the owner or holder. The 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. If the qualifying sustainable building is owned by a partnership or other business association, the owner may pass the credit to its member(s), manager(s), partners(s), shareholder(s) or beneficiary(ies) by completing Section II, and submitting a Form RPD-41327, *Sustainable Building Tax Credit Approval*, for each member, partner, shareholder or beneficiary. Members, managers, partners and beneficiaries may claim a credit only in proportion to their interest in the partnership or association, and will be issued an approval for their portion of the credit. The total credit claimed in the aggregate by all members, managers, 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 the approval request is denied by TRD, Form RPD-41327 will be returned to the building owner with an explanation.

Line Instructions for Completing Form RPD-41327, Sustainable Building Tax Credit Approval: Complete the name block in Section I with the information for the eligible building owner. Complete Section II only 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-41327 for each. The building owner, and if applicable, the

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holder, if other than the eligible building owner, must certify that the solar market development tax credit pursuant to Section 7-2-18.14 NMSA 1978, have not and will not be claimed for any solar thermal system or photovoltaic system installed in the sustainable building that was used as a component of qualification for the energy requirements or rating system certification level used in determining eligibility for the sustainable building tax credit that is approved. The owner's signature and date of signature are required. TRD will complete Section IV of the form, approving, partially approving or disapproving the sustainable building tax credit. The document(s) will be numbered for identification, declaring its date of issuance and the amount of the tax credit allowed.

Attach a copy of the certificate of eligibility issued by EMNRD to Form RPD-41327, *Sustainable Building Tax Credit Approval*, and mail to Taxation and Revenue Department, Edit Error, P.O. Box 5418, Santa Fe, New Mexico 87502-5418. For assistance completing this form, call (505) 476-3683.

Sale, Exchange or Transfer of the Credit: Once a holder (or owner) receives TRD approval, the credit may be sold, exchanged or otherwise transferred. Form RPD-41342, *Notice of Transfer of Sustainable Building Tax Credit*, must be used to report to TRD a transfer of approved sustainable building tax credit to another taxpayer. Notice must be provided to TRD within 10 days of a sale, exchange or other transfer. TRD will issue 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.

Line Instructions for Completing RPD-41342, Notice of Transfer of Sustainable Building Tax Credit: Enter the credit number that TRD assigned to the holder authorizing the transfer of the credit and date of approval. The credit number and approval date are found in the TRD approval section of Form RPD-41327, *Sustainable Building Tax Credit Approval* (Section III), or Form RPD-41342, *Notice of Transfer of Sustainable Building Tax Credit*, which ever applies to the owner or holder transferring the credit. Enter the date of the transfer and the amount of the tax credit to be transferred.

"Transferred from" - Complete this section identifying the owner or holder who transferred the approved sustainable building tax credit.

"Transferred to" - Complete this section identifying the new holder.

The owner or holder transferring the credit and the new holder must both complete the statement and must sign and date the form. Mail Form RPD-41342, *Notice of Transfer of Sustainable Building Tax Credit*, to Taxation and Revenue Department, Edit Error, P.O. Box 5418, Santa Fe, New Mexico 87502-5418. For assistance completing this form, call (505) 476-3683. NOTE: Notice must be mailed to TRD within 10 days of a sale, exchange or other transfer.

Claiming the Credit: A holder of the sustainable building tax

credit may claim the credit against the holder's income tax liability by completing Form RPD-41329, *Sustainable Building Tax Credit Claim Form*, and submitting the claim form with the holder's personal or corporate income tax return. If the amount of the sustainable building tax credit represented by the TRD approval is \$25,000 or more, the credit must be applied against the holder's personal or corporate income tax liability for the tax year in which the credit is approved and for the next three subsequent tax years, in increments of 25% of the total credit amount in each of the four tax years. If the total amount of a sustainable building tax credit approved by TRD is less than \$25,000, the entire amount of the credit may be applied against the personal or corporate income tax liability for the tax year in which the credit is approved. Excess credit may be carried forward for up to seven years. A husband and wife who file separate returns for a taxable year in which they could have filed a joint return may each claim only one-half of the sustainable building credit that would have been allowed on a joint return.

Line Instructions for Completing Form RPD-41329, Sustainable Building Tax Credit Claim Form: Enter the holder's name and social security number or federal employer identification number. Complete Schedule A to compute total excess credit available for carry forward. Include in Schedule A, only credits that have been claimed in a prior tax year, and that have a balance available for carry forward. Credits approved for the tax year of this claim will be included on line 1 of this claim form.

Instructions for Schedule A - worksheet to compute the total excess credit available for carry forward:

- Credit number.** Enter the credit number for each sustainable building tax credit approved by TRD for a previous tax year. If additional space is needed, attach a schedule in the same format on a separate page. Do not enter a credit if the credit was not approved by TRD or if the credit is no longer available for carry forward. Excess sustainable building tax credits may only be carried forward for seven years following the tax year that the credit is approved to be claimed for.
- Amount of credit approved.** For each tax credit listed in column a, enter the amount of credit approved.
- Total credit claimed in previous report periods.** For each credit amount listed in column b, enter the total amount of credit applied to personal or corporate income tax liabilities for prior year returns.
- Excess credit available for carry forward.** Subtract column c from column b and enter the difference.

Total excess credit available for carry forward. Enter the sum of all amounts in column (d). If supplemental pages are attached, enter the sum of all amounts in column (d) from all pages. Also enter this amount on Line 2 of this form.

Line 1. Tax Credits approved. Enter the sustainable building tax credits approved for the tax year of the attached return.

Line 2. Total excess credit available for carry forward. Enter the portion of excess credit available for carry forward from Schedule A.

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Line 3. Enter the sum of lines 1 and 2. This is the total sustainable building tax credit available to be claimed against the personal or corporate income tax liability due on the attached return.

Line 4. Enter the portion of available credit claimed on your attached personal or corporate income tax return. The credit applied to the attached return cannot exceed the amount of personal or corporate income tax liability otherwise due. You must apply credit approved to be claimed in the tax year first (Line 1). If the credit amount approved to be claimed in a tax year is less than the personal or corporate income tax liability for that year, you may apply excess credit available for carry forward (Line 2) next. When applying excess credits available for carry forward, apply the credit with the oldest approval date first.

Attach Form RPD-41329, *Sustainable Building Tax Credit Claim Form*, to your personal or corporate income tax return and mail to Taxation and Revenue Department, P.O. Box 630, Santa Fe, New Mexico 87504-0630. For assistance completing this form, call (505) 476-3683.

IMPORTANT DEFINITIONS

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

Sustainable commercial building means 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, as follows:
 1. through 2011, a fifty percent energy reduction will be required based on the national average for that building type as published by the U.S. Department of Energy; and beginning January 1, 2012, a sixty percent energy reduction will be required based on the national average for that building type as published by the U.S. Department of Energy; and
 2. is 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 New Mexico or LEED H rating systems that:
 1. 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
 2. has achieved a home energy rating system index of sixty or lower as developed by the Residential Energy Services Network;
- b. a multi-family dwelling unit, as registered and certified under the LEED-H or build green New Mexico rating system that:

1. 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
 2. has achieved a home energy rating system index of sixty or lower as developed by the Residential Energy Services Network; or
- c. manufactured housing that is ENERGY STAR-qualified by the U.S. Environmental Protection Agency.

Build green New Mexico rating system means the certification standards adopted by the Homebuilders Association of Central New Mexico.

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-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 gold means the rating in compliance with, or exceeding, the second 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 thirty-six feet by twenty-four feet and a total area of at least eight hundred sixty-four square feet;
- c. constructed in a factory to the standards of the United States 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.

Qualified occupied square footage means the occupied spaces of the building as determined by: (a) the United States Green Building Council for those buildings obtaining LEED certification; (b) the administrators of the build green New Mexico rating system for those homes obtaining build green New Mexico certification; and (c) the United States Environmental Protection Agency for ENERGY STAR-certified manufactured homes.

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The amount of the sustainable building tax credit that may be claimed with respect to a sustainable **commercial** building shall be 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:

LEED Rating 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	\$.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	\$.50
LEED-EB or CS Gold	First 10,000	\$3.35
	Next 40,000	\$1.40
	Over 50,000 up to 500,000	\$.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	\$.70
	Over 50,000 up to 500,000	\$.30
LEED-CI Gold	First 10,000	\$1.90
	Next 40,000	\$.80
	Over 50,000 up to 500,000	\$.40
LEED-CI Platinum	First 10,000	\$2.50
	Next 40,000	\$1.30
	Over 50,000 up to 500,000	\$.80

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

System Rating/Level	Qualified Occupied Square Footage	Tax Credit per Square Foot
LEED-H Silver or Build Green NM Silver	First 2,000	\$5.00
	Next 1,000	\$2.50
LEED-H Gold or Build Green NM Gold	First 2,000	\$6.85
	Next 1,000	\$3.40
LEED-H Platinum or Build Green NM Emerald	First 2,000	\$9.00
	Next 1,000	\$4.45
EPA ENERGY STAR Manufactured Housing	Up to 3,000	\$3.00