

**TITLE 3            TAXATION**  
**CHAPTER 13      BUSINESS TAX CREDITS**  
**PART 20           LAND CONSERVATION INCENTIVES TAX CREDIT**

**3.13.20.1           ISSUING AGENCY:** Energy, Minerals and Natural Resources Department and the Taxation and Revenue Department.

[3.13.20.1 NMAC - N, 1-01-04]

**3.13.20.2           SCOPE:** This part applies to application and certification procedures for administration of the land conservation incentives tax credit.

[3.13.20.2 NMAC - N, 1-01-04]

**3.13.20.3           STATUTORY AUTHORITY:** These rules are established under the authority of NMSA 1978, Sections 7-2-18.10, 7-2A-8.9, 9-1-5(E), and 9-11-6.2, and the Land Conservation Incentives Act, NMSA 1978, Sections 75-9-1 to 75-9-6.

[3.13.20.3 NMAC - N, 1-01-04]

**3.13.20.4           DURATION:** Permanent.

[3.13.20.4 NMAC - N, 1-01-04]

**3.13.20.5           EFFECTIVE DATE:** January 1, 2004, unless a later date is cited at the end of a section.

[3.13.20.5 NMAC - N, 1-01-04]

**3.13.20.6           OBJECTIVE:** The objective of this part is to establish procedures for certifying whether donations of land or interests in land to public or private conservation agencies made on or after January 1, 2004, are eligible for the land conservation incentives tax credit and to administer the land conservation incentives tax credit.

[3.13.20.6 NMAC - N, 1-01-04]

**3.13.20.7           DEFINITIONS:**

A. "Applicant" means a New Mexico taxpayer, either individual or corporate, who on or after January 1, 2004, donates or partially donates through a bargain sale a perpetual fee interest or a less-than-fee interest in real property that appears to qualify as a charitable contribution under section 170(h) of the Internal Revenue Code of 1986 to a public or private conservation agency.

B. "Bargain sale" means a sale where the taxpayer is paid less than the fair market value of the land or interest in land.

C. "Conservation or preservation purpose" means open space, natural area preservation, land conservation or preservation, natural resource or biodiversity conservation including habitat conservation, forest land preservation, agricultural preservation, watershed preservation, or historic or cultural property preservation, or similar uses or purposes such as protection of land for outdoor recreation purposes. The resources or areas contained in the donation must be significant or important.

D. "Cultural property" means a structure, place, site, or object having historic, archaeological, scientific, architectural, or other cultural significance.

E. "Governmental body" means the state of New Mexico or any of its political subdivisions.

F. "Interest in real property" means a right in real property, including access, improvement, water right, fee simple interest, easement and land use easement, partial interest, mineral right, remainder or future interest, or other interest in or right in real property that complies with the requirements of section 170(h)(2) of the Internal Revenue Code of 1986.

G. "Land" means real property, including rights of way, easements, privileges, water rights, and all other rights or interests connected with real property.

H. "Less-than-fee interest" means an interest in land that is less than the entire property or all of the rights in the property or a nonpossessory interest in real property that imposes a limitation or affirmative obligation such as a conservation, land use, or preservation restriction or easement.

I. "National register of historic places" means the register maintained by the United States secretary of the interior of districts, sites, buildings, structures, and objects significant in American history, architecture, archaeology, engineering, and culture.

J. "Public or private conservation agency" means a governmental body or a private non-profit charitable corporation or trust authorized to do business in New Mexico that is organized and operated for natural resources, land, or historic conservation purposes and that has tax-exempt status as a public charity under section 501(c)(3) of the Internal Revenue Code of 1986 and meets the requirements of section 170(h)(3) of the Internal Revenue Code of 1986, and has the power to acquire, hold, or maintain land or interests in land.

K. "Qualified appraisal" means a qualified appraisal as defined in 26 C.F.R. section 1.170A-13(c)(3) or subsequent amendments.

L. "Qualified appraiser" means a qualified appraiser as defined in 26 C.F.R. section 1.170A-13(c)(5) or subsequent amendments.

[3.13.20.7 NMAC - N, 1-01-04]

### **3.13.20.8 GENERAL PROVISIONS:**

A. Only New Mexico taxpayers, individual or corporate, or pass-through tax entities such as trusts, estates, partnerships, limited liability corporations or partnerships, limited partnerships, S corporations, or other fiduciaries, who donate land or interests in land in perpetuity for a conservation or preservation purpose to a public or private conservation agency are eligible for a land conservation incentives tax credit.

B. A land conservation incentives tax credit claimed by a pass-through tax entity may be used either by the pass-through tax entity if it is the taxpayer on behalf of the pass-through tax entity or by the member, manager, partner, shareholder, or beneficiary, as applicable, in proportion to his interest in the pass-through tax entity if the income, deductions, and tax liability pass through to the member, manager, partner, shareholder, or beneficiary. Either (a) the pass-through tax entity or (b) the member, manager, partner, shareholder, or beneficiary, but not both (a) and (b) may claim the land conservation incentives tax credit for the same donation.

C. Qualified donations include the conveyance, on or after January 1, 2004, in perpetuity for a conservation or preservation purpose of a fee interest in real property or a less-than-fee interest in real property that appears to qualify as a charitable contribution under section 170(h) of the Internal Revenue Code of 1986.

D. Donations of land for open space for the purpose of fulfilling density requirements to obtain subdivision or building permits do not qualify for the land conservation incentives tax credit.

E. The taxpayer may claim the land conservation incentives tax credit against the tax liability imposed by the Income Tax Act, in an amount up to fifty percent of the fair market value of the land or interest in land that the taxpayer donates in perpetuity on or after January 1, 2004, for a conservation or preservation purpose to a public or private conservation agency.

F. The amount of the land conservation incentives tax credit a taxpayer claims shall not exceed \$100,000.00 per donation regardless of the value of the land or interest in land donated or the number of taxable years in which the taxpayer carries over any unused portion of the credit. The portion of the credit the taxpayer uses in a taxable year may not exceed the amount of the individual income or corporate income tax otherwise due. A taxpayer shall only claim one land conservation incentives tax credit per taxable year.

G. The taxpayer may carry over portions of the land conservation incentives tax credit that are unused in prior taxable years for a maximum of twenty consecutive years following the taxable year in which the land conservation incentives tax credit originated until fully expended.

H. The land conservation incentives tax credit originates in the year the taxpayer makes the donation.  
[3.13.20.8 NMAC - N, 1-01-04]

### **3.13.20.9 APPLICATION FOR CERTIFICATION:**

A. A taxpayer may obtain a land conservation incentives tax credit application form from the energy, minerals and natural resources department. It shall contain the taxpayer's federal employer identification number or social security number, and, if available, the New Mexico combined reporting system (CRS) identification number.

B. An applicant shall submit an application package to the energy, minerals and natural resources department. The energy, minerals and natural resources department will accept applications beginning January 1, 2004.

C. The applicant shall submit the application package to the energy, minerals and natural resources department no later than January 31 of the calendar year following the tax year in which the credit is sought to assure time for certification to be applied to that taxable year.

D. The application package shall consist of a land conservation incentives tax credit application form, with the following required attachments:

(1) a copy of the conservation easement or deed recorded with the county clerk of the county or counties where the land is located;

- (2) a qualified appraisal of the land or interest in land donated prepared by a qualified appraiser showing the fair market value of the land or interest in land;
- (3) a statement from the taxpayer certifying that the land or interest in land was not donated for open space for the purpose of fulfilling density requirements to obtain subdivision or building permits;
- (4) if the taxpayer donated the land in fee, a statement from the public or private conservation agency to whom the taxpayer donated the land, that the taxpayer donated the land for conservation purposes and the public or private conservation agency will hold the land for such purposes or a copy of internal revenue service form 8283 for that donation signed by the public or private conservation agency; and
- (5) if the taxpayer donated a less-than-fee interest in land:
- (a) a copy of internal revenue service form 8283 for that donation signed by the public or private conservation agency;
  - (b) a provision in the conservation easement or deed that identifies the donation's conservation or preservation purpose or purposes;
  - (c) if the conservation or preservation purpose is for the preservation of land areas for outdoor recreation by or for the education of the general public, a provision in the conservation easement or deed that provides for the general public's substantial and regular use;
  - (d) if the conservation or preservation purpose is for the protection of a relatively natural habitat, a description of the habitat and how the conservation easement or deed protects such habitat; baseline documentation of the habitat or a provision in the conservation easement or deed that describes the habitat and its protection shall suffice;
  - (e) if the conservation or preservation purpose is for the preservation of open space pursuant to a clearly delineated federal, state, or local policy, a provision in the conservation easement or deed identifying such policy and identifying the significant public benefit;
  - (f) if the conservation or preservation purpose is for the preservation of open space that is not pursuant to a clearly delineated federal, state, or local policy, a description of how the conservation easement or deed will provide for the general public's scenic enjoyment and identifying the significant public benefit; if there are provisions in the conservation easement or deed stating how the easement or restriction provides for the general public's scenic enjoyment and identifies the significant public benefit an additional description is not required;
  - (g) if the conservation or preservation purpose is for the preservation of a historically important land area, documentation, in the form of the nomination or determination of eligibility for the national register of historic places; historically important land areas include an independently significant land area that meets the national register criteria for evaluation in 36 C.F.R section 60.4, a land area within a registered historic district that can reasonably be considered as contributing to the district's significance, and a land area adjacent to a property listed individually in the national register of historic places where the land area's physical or environmental features contribute to the property's historic or cultural integrity;
  - (h) if the conservation or preservation purpose is for the preservation of a certified historic structure documentation that the structure is listed in the national register of historic places or located in a registered historic district and certified by the United States secretary of the interior to the United States secretary of the treasury as being of historic significance to the district;
  - (i) if the taxpayer owns the mineral interest a title opinion certifying such ownership, other documentation establishing such ownership, or a report from a professional geologist that the probability of surface mining occurring on such property is so remote as to be negligible, and a provision in the conservation easement or deed that prohibits any extraction or removal of minerals by any surface mining method; methods of mining that have a limited, localized impact on the land and that are not irretrievably destructive of significant conservation interests may be allowed
  - (j) if the ownership of the surface estate and mineral interest has been separate and remains separate, a report from a professional geologist that the probability of surface mining occurring on such property is so remote as to be negligible;
  - (k) a provision in the conservation easement or deed that the conservation restrictions run with the land in perpetuity and that any reserved use shall be consistent with the conservation purpose;
  - (l) a provision in the conservation easement or deed that prohibits the donee from subsequently transferring the interest in land unless the transfer is to another public or private conservation agency and the donee, as a condition of the transfer, requires that the conservation purposes for which the donation was originally intended continue to be carried out;
  - (m) a provision in the conservation easement or deed that provides that the donation of the less-than-fee interest is a property right, immediately vested in the public or private conservation agency receiving the

donation, and provides that the less-than-fee interest has a fair market value that is at least equal to the proportionate value that the conservation restriction at the time of the donation bears to the property as a whole at that time; the provision shall further provide that if subsequent unexpected changes in the conditions surrounding the property make impossible or impractical the property's continued use for conservation purposes and judicial proceedings extinguish the easement or restrictions then the donee is entitled to a portion of the proceeds from the property's subsequent sale, exchange, or involuntary conversion at least equal to the perpetual conservation restriction's proportionate value;

(n) if the taxpayer reserves rights that if exercised may impair the conservation interests associated with the property, a provision in the conservation easement or deed that contains documentation sufficient to establish the property's condition at the time of the donation and a provision whereby the taxpayer agrees to notify the public or private conservation agency receiving the donation before exercising any reserved right that may adversely impact the conservation or preservation purposes;

(o) if the donation is to a private conservation agency, a copy of that agency's 501(c)(3) certification from the internal revenue service; and

(p) if the interest in land is subject to a mortgage, a subordination agreement from the mortgage holder that it subordinates its rights in the interest in land to the public or private conservation agency to enforce the conservation or preservation purposes of the donation in perpetuity.

E. The energy, minerals and natural resources department shall return an incomplete application to the applicant.

[3.13.20.9 NMAC - N, 1-01-04]

### **3.13.20.10 APPLICATION REVIEW PROCESS AND CERTIFICATION OF ELIGIBLE DONATION:**

A. The secretary of the energy, minerals and natural resources department or designee shall review the applications in consultation with the committee established pursuant to the Natural Lands Protection Act. The secretary shall upon receipt of the application initiate consultation by sending the application to the committee members for review and comment or by calling a meeting of the committee.

B. The secretary of the energy, minerals and natural resources department or designee, after consultation with the committee, shall approve or reject an application within 60 days following receipt of the application package. If more time is required the energy, minerals and natural resources department shall notify the applicant of the reason and shall approve or reject the application as soon as possible, but no later than April 1 of the year in which the taxpayer claims the credit.

C. If the secretary of the energy, minerals and natural resources department or designee finds that the application package is complete and the donation of land or interest in land meets the requirements of subsections C and D of 3.13.20.8 NMAC and 3.13.20.9 NMAC, the secretary shall approve the application. The energy, minerals and natural resources department's approval is given by the issuance of a letter to the applicant and the taxation and revenue department. This letter shall certify that the donation of land or interest in land includes the conveyance in perpetuity, on or after January 1, 2004, for a conservation or preservation purpose of a fee interest in real property or a less-than-fee interest in real property that meets the requirements of the Land Conservation Incentives Act and these rules.

D. The secretary of the energy, minerals and natural resources department or designee shall reject an application that is not complete or correct, or does not meet the criteria in subsections C and D of 3.13.20.8 NMAC and 3.13.20.9 NMAC. The energy, minerals and natural resources department's letter shall state the specific reasons why the application was rejected. If the secretary of the energy, minerals and natural resources department or designee rejected the application because it was incomplete, incorrect, or did not meet the requirements of subsections C and D of 3.13.20.8 NMAC and 3.13.20.9 NMAC, the applicant may resubmit the application package for the rejected donation of land or interest in land with the complete or correct information or additional information that addresses the requirements the donation did not meet. The energy, minerals and natural resources department shall place the resubmitted application in the review schedule as if it were a new application.

[3.13.20.10 NMAC - N, 1-01-04]

### **3.13.20.11 FILING REQUIREMENTS:**

A. The claim for the land conservation incentives tax credit shall consist of the letter from the energy, minerals and natural resources department certifying that the donation of land or interest in land includes the conveyance in perpetuity, on or after January 1, 2004, for a conservation or preservation purpose of a fee interest in

real property or a less-than-fee interest in real property that meets the requirements of the Land Conservation Incentives Act and these rules.

B. The taxpayer shall submit the claim on a claim form developed by the taxation and revenue department. The claim form shall accompany the New Mexico personal income, corporate, or pass through entity income tax return for the year in which the donation was made or in subsequent tax years not to exceed twenty consecutive years following the taxable year in which the land conservation incentives tax credit originated for unused portions of the tax credit.

C. A taxpayer who has both a carryover credit and a new credit derived from a qualified donation in the taxable year for which the return is being filed shall first apply the amount of carryover credit against the income tax liability. If the amount of liability exceeds the carryover credit, then the current year credit may be applied against the liability.

D. If the taxpayer donated a portion of the land or interest in land's value, but was paid for the remaining fair market value of the land or interest in land, the taxpayer may claim only the land conservation incentives tax credit on that portion of the value that was donated.

E. A taxpayer claiming a tax credit pursuant to the Land Conservation Incentives Act shall not claim a credit pursuant to a similar law for costs related to the same donation.

[3.13.20.11 NMAC - N, 1-01-04]

**HISTORY OF 3.13.20 NMAC:**

**Pre-NMAC History:** None.

**History of Repealed Material:** [RESERVED]