

TITLE 3 TAXATION
CHAPTER 3 PERSONAL INCOME TAXES
PART 31 APPLICATION AND CERTIFICATION PROCESS FOR THE ADMINISTRATION OF
THE WATER CONSERVATION TAX CREDIT

3.3.31.1 ISSUING AGENCY: New Mexico Department of Agriculture

[3.3.31.1 NMAC - N, 12/01/08]

[3190 South Espina, Las Cruces, New Mexico 88003-8005. Mailing address: MSC 3189, P.O. Box 30005, Las Cruces, New Mexico 88003-8005. Phone number: 575-646-3007]

3.3.31.2 SCOPE: 3.3.31 NMAC applies to the application and certification process for the administration of the water conservation tax credit.

[3.3.31.2 NMAC - N, 12/01/08]

3.3.31.3 STATUTORY AUTHORITY: Established under the authority of Sections 7-2-18.20 and 7-2A-22 NMSA 1978.

[3.3.31.3 NMAC - N, 12/01/08]

3.3.31.4 DURATION: January 1st, 2013.

[3.3.31.4 NMAC - N, 12/01/08]

3.3.31.5 EFFECTIVE DATE: December 1, 2008, unless a later date is cited at the end of a section.

[3.3.31.5 NMAC - N, 12/01/08]

3.3.31.6 OBJECTIVE: To establish procedures and guidelines implementing and interpreting the provisions of the agricultural water conservation tax credit.

[3.3.31.6 NMAC - N, 12/01/08]

3.3.31.7 DEFINITIONS: As used in Sections 7-2-18.20 and 7-2A-22 NMSA 1978 and 3.3.31 NMAC.

A. "Agricultural water conservation tax credit" means the tax credit allowed by Sections 7-2-18.20 and 7-2A-22 NMSA 1978.

B. "Applicant" means an individual New Mexico taxpayer, as defined by New Mexico statute, or "applicant" means corporate taxpayer, as defined by New Mexico statute, who desires to have a district issue a certificate of eligibility for a qualified improvement in irrigation systems or water management methods. Applicant includes a partnership, limited liability corporation, or other form of pass-through entity, which may pass the credit provided in Sections 7-2-18.20 and 7-2A-22 NMSA 1978 through to its owners in proportion to their share of ownership.

C. "Application package" means the application documents an applicant submits to the district from which the applicant received the application package, to request a certificate of eligibility for an agricultural water conservation tax credit.

D. "Certificate of eligibility" means the document issued by the district to which the applicant submitted an application package which sets forth the amount and year of the claimed agricultural water conservation tax credit.

E. "Department" means the New Mexico taxation and revenue department.

F. "District" means one of the soil and water conservation districts in New Mexico.

G. "Eligible improvement in irrigation systems or water management methods" means an improvement as defined by Sections 7-2-18.20 (C) (1) through (3) NMSA 1978, or Sections 7-2A-22 (C) (1) through (3) NMSA 1978.

H. "Expense" means expenditures incurred and documented by an original or copy(s) of receipts or invoices for an improvement in irrigation systems or water management methods, which is submitted with the application package.

I. "Taxable year" means the calendar year or fiscal year as defined by Sections 7-2-2(Y) or 7-2A-2(O) NMSA 1978.

J. "Water conservation plan" means a written or typed document on 8½ inch by 11 inch paper detailing the amount of anticipated water conservation, and improvements in irrigation systems or water

management method(s) which are designed to conserve water, reduce water consumption or the opportunity for ground water or surface water contamination.

[3.3.31.7 NMAC - N, 12/01/08]

[Refer to United States Department of Agriculture, Natural Resources Conservation Service publication, New Mexico Water Management Handbook, for suggestions on improvements in irrigation systems or water management methods.]

3.3.31.8 GENERAL PROVISIONS:

A. For the purposes of Section 7-2-18.20 NMSA 1978, an applicant may claim an agricultural water conservation tax credit for the taxable year in which the expenses are incurred if, in that year, the applicant owned or leased a water right appurtenant to the land on which an eligible improvement was made, and files an individual New Mexico income tax return for that year, is not a dependent of another individual, and does not take a tax credit for the same expense on any corporate tax return filed by the taxpayer.

B. For the purposes of Section 7-2A-22 NMSA 1978, an applicant may claim an agricultural water conservation tax credit for the taxable year in which the expenses are incurred if, in that year, the applicant owned or leased a water right appurtenant to the land on which an eligible improvement was made and files a New Mexico corporate income tax return for that year.

C. Only an applicant who on or after January 1, 2008, installs eligible improvements in irrigation systems or water management methods in New Mexico may receive a certificate of eligibility for an agricultural water conservation tax credit.

D. The agricultural water conservation tax credit shall not exceed \$10,000 per application.

E. For expenses incurred from January 1, 2008, until December 31, 2008, the agricultural water conservation tax credit is an amount equal to 35 percent of the incurred expenses.

F. For expenses incurred on or after January 1, 2009, the agricultural water conservation tax credit is an amount equal to 50 percent of the incurred expenses.

G. If the amount of the agricultural water conservation tax credit the applicant claims exceeds the applicant's personal or corporate income tax, the applicant may carry the excess forward for not more than five consecutive tax years.

H. An applicant claiming the agricultural water conservation tax credit shall provide documentary evidence of the amount of water conserved during the period for which the credit is claimed if requested by the department.

I. Water conserved due to eligible improvements in irrigation systems or water management methods and for which an agricultural water conservation tax credit is claimed shall not be subject to abandonment or forfeiture, nor shall the conserved water be put to consumptive beneficial use.

[3.3.31.8 NMAC - N, 12/01/08]

3.3.31.9 APPLICATION PROCESS:

A. An applicant shall submit a water conservation plan to the district which encompasses the land upon which the applicant is claiming an eligible improvement in irrigation systems or water management methods has occurred. The water conservation plan may be submitted along with or prior to submitting an application package.

B. An applicant shall obtain an application package from the district which encompasses the land upon which the applicant is claiming an improvement has occurred.

C. An application package shall include a certificate of eligibility form and attachments as specified in the application package. The applicant shall submit the completed application package including the required attachments at the same time. An applicant shall submit one application package for each improvement in irrigation systems or water management methods. The applicant shall submit all material in the application package, including attachments, on 8½ inch by 11 inch paper.

D. An applicant shall submit a complete application package to the district from which the applicant obtained the application package.

E. A completed application package shall consist of the following information:

(1) applicant information, including the applicant's name, mailing address, telephone number, agricultural water conservation tax credit's taxable year or years;

(2) irrigation or water management equipment information, including project location with county and legal description, irrigation or water management equipment cost, irrigation systems or water management installation cost, and date the irrigation systems or water management equipment went into operation;

(3) proof of owned or leased water rights appurtenant to the land on which the improvements in irrigation systems or water management methods are made;

(4) evidence of purchase of irrigation or water management equipment and installation including receipts and invoices;

(5) calculation of the agricultural water conservation tax credit, calculated by the applicant, for the improvement in irrigation systems or water management methods;

(6) applicant agreement stating that all information in the application packet is true and correct to the best of the applicant's knowledge and the applicant has read the certification requirements of 3.3.31 NMAC.

[3.3.31.9 NMAC - N, 12/01/08]

3.3.31.10 WATER CONSERVATION PLAN AND APPLICATION REVIEW PROCESS:

A. Upon receipt of a water conservation plan, a district shall certify receipt of the water conservation plan and have 60 days from receipt to determine whether said water conservation plan is approved or disapproved.

B. A district considers application packages in the order received according to the day they are received, but not the time of day.

C. Upon receipt of an application package, a district shall certify receipt of the application package and have 60 days from receipt to approve or disapprove the application package.

D. A district reviews the application package to check the accuracy of the applicant's documentation, including whether the proposed improvements in irrigation systems or water management methods fall within the definition of eligible improvements in irrigation systems or water management methods, and determines whether the district issues a certificate of eligibility for the agricultural water conservation tax credit.

E. If a district finds the application package sufficient, the district issues the certificate of eligibility for a water conservation tax credit.

F. A district may disapprove an application. The district's disapproval letter shall state the reasons why the district disapproved the application. The applicant may resubmit the application package for the disapproved project. The district places the resubmitted application in the review schedule as if it were a new application.

[3.3.31.10 NMAC - N, 12/01/08]

3.3.31.11 CLAIMING THE TAX CREDIT: Upon receipt of a certificate of eligibility from a district, the applicant shall submit the certificate of eligibility, along with a completed personal or corporate income tax return form, and a completed agricultural water conservation tax credit claim form to the department.

[3.3.31.11 NMAC - N, 12/01/08]

[Refer to New Mexico Taxation and Revenue Department tax credit claim form RPD-41319]

HISTORY OF 3.3.31 NMAC: [RESERVED]