

TITLE 4 CULTURAL RESOURCES
CHAPTER 10 CULTURAL PROPERTIES AND HISTORIC PRESERVATION
PART 9 CREDIT TO STATE INCOME TAX FOR APPROVED RESTORATION,
REHABILITATION, OR PRESERVATION OF REGISTERED CULTURAL
PROPERTIES

4.10.9.1 ISSUING AGENCY: Department of cultural affairs, historic preservation division.
[4.10.9.1 NMAC - Rp, 4.10.9.1, 1/1/26]

4.10.9.2 SCOPE: Individuals or corporations that own registered cultural properties may receive a credit against personal or corporate state of New Mexico income tax liabilities according to the procedures and criteria established in this regulation. See also regulations adopted under the taxation and revenue department's authority under Section 9-11-6 NMSA 1978 (1994 Repl. Pamp.) (Subsections A through D of 3.3.13.10 NMAC).
[4.10.9.2 NMAC - Rp, 4.10.9.2, 1/1/26]

4.10.9.3 STATUTORY AUTHORITY: This regulation is created pursuant to the Income Tax Act, NMSA 1978 Section 7-2-18.2.A through 7-2-18.2.H, and Corporate Income Tax Act, NMSA 1978 Section 7-2A-8.6.A through 7-2A-8.6.G, which require the historic preservation division to promulgate regulations for implementation of the acts, as well as the Cultural Properties Act, NMSA 1978 Section 18-6-8.D, which states the state historic preservation officer shall administer historic preservation tax benefit programs.
[4.10.9.3 NMAC - Rp, 4.10.9.3, 1/1/26]

4.10.9.4 DURATION: Permanent.
[4.10.9.4 NMAC - Rp, 4.10.9.4, 1/1/26]

4.10.9.5 EFFECTIVE DATE: January 1, 2026, unless a later date is cited at the end of a section.
[4.10.9.5 NMAC - Rp, 4.10.9.5, 1/1/26]

4.10.9.6 OBJECTIVE: The purpose of this regulation is to provide objective guidance to the committee and the division for the lawful administration of state income tax credits available for eligible expenses for the restoration, rehabilitation, or preservation of properties listed in the register.
[4.10.9.6 NMAC - Rp, 4.10.9.6, 1/1/26]

4.10.9.7 DEFINITIONS:

- A.** "Committee" means the cultural properties review committee.
- B.** "Division" means the historic preservation division of the department of cultural affairs.
- C.** "Owner" means the sole owner of a registered cultural property. In the case of a joint or part ownership, or partnership, owners shall claim credit only in proportion to their interest in the ownership or partnership. The term "owner" shall include the owner of a leasehold interest in a registered cultural property if the term of the lease (determined without regard to renewal periods) is at least five years.
- D.** "Integrity" means the historic identity for which a particular property is significant.
- E.** "Preservation" means the act or process of applying measures to sustain the existing form, integrity, and material of a building, structure, object, or landscape; or the act or process of providing protective maintenance or stabilization of archaeological sites.
- F.** "Project" means a planned restoration, rehabilitation, or preservation of a registered cultural property that entails a clearly defined scope of work. A project may be as simple as the restoration of a single space, such as one room, or element, such as a roof, or it may be as complex as the rehabilitation of a multi-story structure or group of structures.
- G.** "Register" means the state register of cultural properties.
- H.** "Registered cultural property" means a cultural property placed in the state register. A registered property may be listed individually or as significant or contributing within a district.
- I.** "Rehabilitation" means the act or process of returning a property to a state of utility through repair or alteration that makes possible an efficient contemporary use while preserving those portions or features of the property that are significant to its historical, architectural, and cultural values.

J. "Restoration" means the action or process of accurately recovering the form and details of a property and its setting as it appeared at a particular period of time by means of the removal of later work or the replacement of missing earlier work.

[4.10.9.7 NMAC - Rp, 4.10.9.7, 1/1/26]

4.10.9.8 PROPERTY ELIGIBILITY:

A. Registered cultural properties are eligible properties for the purpose of the state income tax credit program. Registered cultural properties include:

- (1) all properties listed individually in the register; and
- (2) all properties located within the boundaries of historic districts listed in the register and determined to be contributing to that district; structures without a clear designation or located in uninventoried districts shall be certified as contributing or non-contributing by the committee according to information supplied in a Part 1 application and the recommendations of the division.

B. A cultural property must be listed in the register by the time of Part 1 application review and approval by the committee.

[4.10.9.8 NMAC - Rp, 4.10.9.8, 1/1/26]

4.10.9.9 PROGRAM REQUIREMENTS: Program requirements include the following criteria and procedures.

A. All plans, specifications, descriptions, or research designs for a project for which a state income tax credit is to be claimed shall be submitted to the committee in a Part 1 application for review at a regularly scheduled meeting prior to the commencement of work.

(1) The application shall be received by the division at least 30 calendar days prior to the committee meeting at which it shall be reviewed.

(2) The application shall describe all work that will affect the property, whether or not it is determined to be eligible for credit, during the project time frame. Photographs and detailed cost estimates shall be included.

(3) The division shall review the submitted application and supporting materials for completeness, accuracy, and conformance with program standards, program expense guidelines, and program eligibility requirements. The division shall attempt to contact the applicant and, if necessary, conduct a site visit to remedy any inaccuracies or inadequacies before further review or processing of the application. The division may recommend to the committee that an application be conditionally approved, tabled, or denied if the application fails to conform with program standards, program expense guidelines, or program eligibility requirements, either upon initial receipt of the application or through failure to respond adequately to a request for information or correction of inaccuracies. The division shall forward all complete applications and recommendations to the committee for consideration at the next scheduled committee meeting.

B. The committee shall consider the eligibility of the property, review the application for conformance with the applicable standards and program expense guidelines, and take action on the application. Such action shall take the form of an approval, approval with conditions, tabling, or denial. The applicant shall be notified of the committee's decision by the division within 14 calendar days of the committee's meeting.

C. Project work may commence only upon notification of the committee's approval.

(1) Projects for which work has begun prior to committee review and approval shall be disqualified.

(2) Projects must be completed within 24 months of the approval date.

(3) Alterations or additions to approved projects must be submitted to the committee in the form of an amendment application for review and action by the committee at a regularly scheduled meeting prior to the commencement of work. The amendment application is subject to the same program requirements as the Part 1 application. The approval of an amendment application does not reset or extend the 24-month window for project completion established with the original Part 1 application.

D. After project work has been completed, a Part 2 application shall be submitted for review and certification of approved restoration, preservation, or rehabilitation at a regularly scheduled meeting.

(1) The application shall be received by the division at least 30 calendar days prior to the committee's meeting at which it will be reviewed and within 60 calendar days after the completion of the work, but in no event later than January 25 of the year following the taxable year in which the credit is claimed.

(2) All completed work shall be described and documented with photographs and financial documentation to include a summary sheet of expenditures, detailed invoices, receipts, canceled checks, credit card

statements, or any other materials requested by the division or committee regarding expenses for which credit is sought.

(3) The division shall review the submitted application and supporting materials for completeness, accuracy, and conformance with program standards, program expense guidelines, and program eligibility requirements. The division shall attempt to contact the applicant and, if necessary, conduct a site visit to remedy any inaccuracies or inadequacies before further review or processing of the application. The division may recommend to the committee that an application be conditionally approved, tabled, or denied if the application fails to conform with program standards, program expense guidelines, or program eligibility requirements, either upon initial receipt of the application or through failure to respond adequately to a request for information or correction of inaccuracies. The division shall forward all complete applications and recommendations to the committee for consideration at the next scheduled committee meeting.

E. The committee shall review the completed work for conformity with the work schedule, program standards, program expense guidelines, and any approval conditions, and take action on the application. Such action shall take the form of an approval, approval with conditions, tabling, or denial, and include the total creditable cost of an approved project.

[4.10.9.9 NMAC - Rp, 4.10.9.9, 1/1/26]

4.10.9.10 NOTIFICATION OF CREDIT: Upon review and certification of a completed Part 2 application, the division shall notify the owner and the taxation and revenue department of the total creditable cost of the approved project. Notification to the owner shall occur within 14 calendar days after the committee meeting at which the project is reviewed.

[4.10.9.10 NMAC - Rp, 4.10.9.10, 1/1/26]

4.10.9.11 STANDARDS:

A. The committee shall review architectural applications for conformance with the secretary of interior's standards for rehabilitation (published at 36 CFR Part 67, reproduced below).

(1) A property shall be used for its historic purpose or be placed in a new use that requires minimal change to the defining characteristics of the building and its site and environment.

(2) The historic character of a property shall be retained and preserved. The removal of historic materials or alteration of features and spaces that characterize a property shall be avoided.

(3) Each property shall be recognized as a physical record of its time, place and use. Changes that create a false sense of historical development, such as adding conjectural features or architectural elements from other buildings, shall not be undertaken.

(4) Most properties change over time; those changes that have acquired historic significance in their own right shall be retained and preserved.

(5) Distinctive features, finishes, and construction techniques or examples of craftsmanship that characterize a property shall be preserved.

(6) Deteriorated historic features shall be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature shall match the old in design, color, texture, and other visual qualities and, where possible, materials. Replacement of missing features shall be substantiated by documentary, physical or pictorial evidence.

(7) Chemical or physical treatments, such as sand-blasting, that cause damage to historic materials shall not be used. The surface cleaning of structures, if appropriate, shall be undertaken using the gentlest means possible.

(8) Significant archeological resources affected by a project shall be protected and preserved. If such resources must be disturbed, mitigation measures shall be undertaken.

(9) New additions, exterior alterations, or related new construction shall not destroy historic materials that characterize the property. The new work shall be differentiated from the old and shall be compatible with the massing, size, scale and architectural features to protect the historic integrity of the property and its environment.

(10) New additions and adjacent or related new construction shall be undertaken in such a manner that, if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

B. The committee shall review archaeological applications for conformance with the following standards for archaeological site preservation.

(1) The prehistoric or historic integrity of a property shall be preserved. The destruction of contributing features shall be avoided.

(2) If standing features on a site are deteriorating, repair and stabilization measures shall be undertaken with sensitivity to the character of the feature. If replacement of materials is necessary, the new shall match the old and appropriate documentation shall indicate restored areas.

(3) Erosion control measures shall be undertaken if features or artifacts of significant sites are disturbed by natural agents. These measures shall not detract from the character of the site and shall not harm significant features.

(4) Site fencing shall be undertaken if a significant site is suffering from human or animal caused disturbance. The location of fencing shall avoid significant features.

(5) Sign installation shall be undertaken if an owner wishes to protect a significant site from unauthorized excavation. Sign wording must be approved by the cultural properties review committee. Signs shall not be posted in areas which would disturb archaeological features.

(6) Camouflaging a site with vegetation or soil shall be undertaken if an owner is concerned about vandalism. Appropriate documentation shall precede this activity.

(7) Professional archaeologists shall be consulted when performing site preservation activities.

[4.10.9.11 NMAC - Rp, 4.10.9.11, 1/1/26]

4.10.9.12 PROJECT WORK ELIGIBILITY:

A. The committee shall not approve a project or any part of a project that contains any work item that does not conform to 4.10.9.9 NMAC or 4.10.9.11 NMAC.

B. Any restoration, preservation, or rehabilitation executed prior to the listing of the property on the register is not eligible for the income tax credit program.

C. The committee shall refer to the division's program expense guidelines, which are available on the division's website or upon request, to determine whether expenses for work are eligible for credit and approve project costs accordingly.

D. The expenses incurred for work on a registered cultural property's buildings or structures that are not certified as contributing shall not be eligible for credit.

E. Only the expenses incurred for work on the portions of an eligible property that date to the period of significance per the register nomination and, where unclear, according to the evaluation of the committee and the recommendations of the division shall be eligible for credit.

F. The expenses incurred for work not previously included and approved in a Part 1 application or amendment application shall not be eligible for credit.

G. The expenses incurred for work that is not eligible shall not be reflected in the committee-approved total creditable project cost.

[4.10.9.12 NMAC - Rp, 4.10.9.12, 1/1/26]

4.10.9.13 CESSATION OF TAX CREDIT: In case of the removal of the property from the register by the committee because of unauthorized or improper alteration or preservation technique that destroys the significant qualities of the structure, or by reason of destruction or loss of the property, the division will inform the taxation and revenue department that no further credit may be claimed by that owner for that project.

[1/21/94; 4.10.9.13 NMAC - Rn, 4 NMAC 10.9.13, 1/1/08]

4.10.9.14 APPEALS: Any applicant whose application has been denied in its entirety by the committee shall have the right to appeal the decision. Any conditions attached to an approval cannot be appealed.

A. All requests for an appeal shall include a written statement of the applicant's reason for requesting an appeal and any additional information that the applicant believes will support the appeal.

B. Within 14 calendar days of receipt of a written request for a hearing, the division shall inform the applicant in writing of the next possible scheduled committee meeting at which the appeal will be heard. The notice of public hearing shall be published pursuant to Section 9-4A-6 NMSA 1978 of the Cultural Affairs Department Act.

(1) The chair of the committee shall convene the committee as the hearing panel.

(2) The chair of the committee or their designee shall serve as the chair of the hearing panel. Hearings will be conducted in accordance with the committee's rules of procedure.

(3) The division may provide testimony at the hearing. A written record of the proceedings shall be kept.

C. Decisions of the hearing panel shall be based on a simple majority vote of the members of the panel.

D. The division shall inform the applicant of the decision of the hearing panel in writing. Decisions of the hearing panel shall be final.

[4.10.9.14 NMAC - Rp, 4.10.9.14, 1/1/26]

HISTORY OF 4.10.9 NMAC:

Pre-NMAC History: The material in the part was derived from that previously filed with the commission of public records, state records center and archives under:

CPRC Rule 84-1, Regulations for Credit to State Income Tax for Approved Restoration, Rehabilitation, or Preservation of Registered Cultural Properties, filed 11/7/84.

CPRC Rule 87-2, Regulations for Credit to State Income Tax for Approved Restoration, Rehabilitation, or Preservation of Registered Cultural Properties, filed 3/26/87.

CPRC Rule 94-1 Regulations for Credit to State Income Tax for Approved Restoration, Rehabilitation, or Preservation of Registered Cultural Properties, filed 1/21/94.

History of Repealed Material: 4.10.9 NMAC, Credit to State Income Tax for Approved Restoration, Rehabilitation, or Preservation of Registered Cultural Properties, filed on 12/16/2007, was repealed and replaced with 4.10.9 NMAC, Credit to State Income Tax for Approved Restoration, Rehabilitation, or Preservation of Registered Cultural Properties, effective 1/1/2026.

Other History: CPRC Rule 94-1 Regulations for Credit to State Income Tax for Approved Restoration, Rehabilitation, or Preservation of Registered Cultural Properties (filed 1/21/94) was renumbered, reformatted and replaced by 4 NMAC 10.9, Credit to State Income Tax for Approved Restoration, Rehabilitation, or Preservation of Registered Cultural Properties, effective 11/15/97.

4 NMAC 10.9, Credit to State Income Tax for Approved Restoration, Rehabilitation, or Preservation of Registered Cultural Properties (filed 11/03/97) renumbered, reformatted and replaced by 4.10.9 NMAC, Credit to State Income Tax for Approved Restoration, Rehabilitation, or Preservation of Registered Cultural Properties, effective 1/1/08.