

This rule was filed as 4 NMAC 10.9.

**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:** Cultural Properties Review Committee. Contact State Historic Preservation Division, Office of Cultural Affairs.  
[11-15-97; Recompiled 10/31/01]

**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.) (3 NMAC 3.13.10.1 through 3 NMAC 3.13.10.4 [now Subsections A through D of 3.3.13.10 NMAC]).  
[11-15-97; Recompiled 10/31/01]

**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 requires the state historic preservation division to promulgate regulations for implementation of the act.  
[1-21-94; Recompiled 10/31/01]

**4.10.9.4            DURATION:** Permanent  
[11-15-97; Recompiled 10/31/01]

**4.10.9.5            EFFECTIVE DATE:** 1-24-94 unless a later date is cited at the end of a section. Reformatted in NMAC format effective November 15, 1997.  
[11-15-97; Recompiled 10/31/01]

**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 restoration, rehabilitation or preservation expenses on properties listed on the register.  
[1-21-94; Recompiled 10/31/01]

**4.10.9.7            DEFINITIONS:**

- A. "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.
- B. "Rehabilitation" means the act or process of returning a property to a state of utility through repair or alteration which makes possible an efficient contemporary use while preserving those portions or features of the property which are significant to its historical, architectural and cultural values.
- C. "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.
- D. "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.
- E. "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.

- F. "Committee" means the cultural properties review committee.
- G. "Division" means the historic preservation division of the office of cultural affairs.
- H. "Register" means the New Mexico register of cultural properties.

[1-21-94; Recompiled 10/31/01]

**4.10.9.8 ELIGIBILITY:**

A. All cultural properties, after having been listed on the register, are eligible properties for the purpose of the state income tax credit program. cultural properties listed on the register include:

- (1) all properties listed individually on the register; and,
- (2) all properties located within the boundaries of districts listed on the register and determined to be

contributing to that district. Structures located in uninventoried districts shall be certified as contributing or non-contributing by the committee according to information supplied in "Application: State Income Tax Credit for Registered Cultural Properties, Part 1," and the recommendations of the division.

B. Any restoration, preservation or rehabilitation executed prior to the listing of the property on the register or that does not comply with 4 NMAC 10.9 [4.10.9 NMAC] is not eligible for the income tax credit program.

[1-21-94; Recompiled 10/31/01]

**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 presented to the committee for review in a regularly scheduled meeting in Part 1 of the application prior to the commencement of work. All work that will affect the property during the project time frame shall be described, whether or not it is eligible for credit within the program. The application shall be received in the office of the division at least 14 days prior to the committee meeting in which it shall be reviewed. The division shall determine whether the information being presented is complete and adequate for committee review.

B. The owner of the cultural property must have consented in writing to listing on the register by the time of application.

C. The committee will review the application for conformance with the applicable standards and will take action on the application. Such action will take the form of an approval, approval with conditions, tabling, or denial. The applicant will be notified of the committee's decision within 14 days of the committee's meeting.

D. Projects must be completed within 24 months of the approval date. Alterations to approved projects must be submitted to the committee for action at a regularly scheduled meeting.

E. After the project is completed, the owner of a registered cultural property will submit an application to the committee for the certification of approved restoration, preservation or rehabilitation and shall provide to the committee a complete description with photographs of all work performed. Part 2 of the application (requests for certification of completed work) shall be received by the division at least 14 days prior to the committee's meeting in which it will be reviewed and within 60 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. The division shall determine whether the information being presented is complete and adequate for committee review. The property owner shall submit together with part 2, accurate and complete documentation, including a summary sheet of expenditures along with invoices, canceled checks, receipts, or any documents requested by the committee of all expenses for which the property owner proposes to claim credit. Work items that are not eligible for credit shall not be included in the cost document within part 2.

F. The committee shall review the completed work for conformity with the work schedule and the program standards.

[1-21-94; Recompiled 10/31/01]

**4.10.9.10 NOTIFICATION OF CREDIT:** Upon review and certification of a completed part 2, 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 be within 14 days after the committee meeting in which the project is reviewed.

[1-21-94; Recompiled 10/31/01]

#### **4.10.9.11 STANDARDS:**

A. The committee will 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 will review archaeological applications for conformance with the following *Standards for Archaeological Site Preservation*, 4.10.9.11.2.1 [now Paragraph (1) of Subsection B of 4.10.9.11 NMAC] through 10.9.11.2.10 [now Paragraph (10) of Subsection B of 4.10.9.11 NMAC], derived from standards set forth in the *Secretary of the Interior's Standards for Rehabilitation* and the *Ruins Preservation Guidelines, Pecos National Monument, NM*.

(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.

[1-21-94; Recompiled 10/31/01]

#### **4.10.9.12 NON-CREDITABLE WORK ITEMS:**

A. The committee may approve a project, as described in part 1, which contains work items that are not creditable. These items include, but are not necessarily limited to:

- (1) new construction (except as may be required by current building and life safety codes).
- (2) landscaping (except if such landscaping is significant for its historic qualities and is noted in the original nomination).
- (3) routine maintenance (including, but not limited to, cleaning, painting, minor repairs and periodic upkeep except where these items are part of an initial overall restoration program).
- (4) repairs to additions added to a structure after placement on the Register, unless the addition has achieved historical significance.
- (5) interior furnishings, unless of historical significance and noted in the nomination.
- (6) archaeological site excavation.

B. The expenses incurred for these items shall not be reflected in the committee approved total project cost. The committee shall not approve a project or any part of a project which contains any work-item which does not conform to Section 11 [4.10.9.11 NMAC].

[1-21-94; Recompiled 10/31/01]

**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 which destroys the significant qualities of the structure, or by reason of destruction or loss of the property, or for any other reason which makes a property ineligible for continued listing on the register, 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; Recompiled 10/31/01]

**4.10.9.14 APPEALS:** In the event a property owner's application for tax credit is denied, or withdrawn for cause, the property owner may appeal that action pursuant to the Tax Administration Act. (Section 7-1-1-et.seq NMSA 1978).

[1-21-94; Recompiled 10/31/01]

#### **HISTORY OF 4.10.9 NMAC**

**Pre-NMAC History:** The material in the part was derived from that previously filed with the state records center & 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;

this regulation was superseded by 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;

this regulation was superseded by 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:** [RESERVED]