

AN ACT

RELATING TO TAXATION; INCLUDING CERTAIN ELECTRICITY GENERATION IN THE DEFINITION OF MANUFACTURING FOR PURPOSES OF THE INVESTMENT CREDIT ACT AND FOR APPORTIONMENT OF BUSINESS INCOME FOR INCOME TAX PURPOSES; PROVIDING FOR ISSUANCE OF INDUSTRIAL REVENUE BONDS FOR ELECTRICITY GENERATION FACILITY PROJECTS IN CERTAIN COUNTIES; AMENDING SECTIONS OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 4-59-2 NMSA 1978 (being Laws 1975, Chapter 286, Section 2, as amended) is amended to read:

"4-59-2. DEFINITIONS. --As used in the County Industrial Revenue Bond Act, unless the context clearly indicates otherwise:

A. "commission" means the governing body of a county;

B. "county" means those counties organized or incorporated in New Mexico;

C. "health care services" means the diagnosis or treatment of sick or injured persons or medical research and includes the ownership, operation, maintenance, leasing and disposition of health care facilities, such as hospitals, clinics, laboratories, x-ray centers and pharmacies;

D. "mortgage" means a mortgage or a mortgage and deed of trust or the pledge and hypothecation of any assets

as collateral security;

E. "project" means any land and building or other improvements thereon, the acquisition by or for a New Mexico corporation of the assets or stock of an existing business or corporation located outside the state to be relocated within a county, but not within the boundaries of any incorporated municipality, in the state, and all real and personal properties deemed necessary in connection therewith, whether or not now in existence, which shall be suitable for use by the following or by any combination of two or more thereof:

(1) any industry for the manufacturing, processing or assembling of any agricultural or manufactured products;

(2) any commercial enterprise in storing, warehousing, distributing or selling products of agriculture, mining or industry, but does not include facilities designed for the sale or distribution to the public of electricity, gas, telephone or other services commonly classified as public utilities, except for:

(a) water utilities; and

(b) electricity generation facilities in any class B county with: 1) a population of more than forty-seven thousand but less than sixty thousand according to the 1990 federal decennial census and with a net taxable value for property taxation purposes for the 1999 property

tax year of more than five hundred fifty million dollars (\$550,000,000); 2) a population of less than twenty thousand according to the 1990 federal decennial census and with a net taxable value for property taxation purposes for the 1999 property tax year of more than two hundred ten million dollars (\$210,000,000) but less than four hundred million dollars (\$400,000,000); 3) a population of more than fifteen thousand but less than nineteen thousand according to the 1990 federal decennial census and with a net taxable value for property taxation purposes for the 1999 property tax year of more than one hundred eighty million dollars (\$180,000,000) but less than two hundred forty million dollars (\$240,000,000); 4) a population of more than forty-two thousand but less than forty-five thousand according to the 1990 federal decennial census and with a net taxable value for property taxation purposes for the 1999 property tax year of more than three hundred million dollars (\$300,000,000) but less than four hundred million dollars (\$400,000,000); 5) a population of less than six thousand according to the 1990 federal decennial census and with a net taxable value for property taxation purposes for the 1999 property tax year of more than one hundred million dollars (\$100,000,000); or 6) a population of less than thirty-five thousand according to the 1990 federal decennial census and with a net taxable value for property taxation purposes for the 1999 property tax year of more than seven

hundred million dollars (\$700,000,000);

(3) any business in which all or part of the activities of such business involve the supplying of services to the general public or to governmental agencies or to a specific industry or customer;

(4) any nonprofit corporation engaged in health care services;

(5) any mass transit or other transportation activity involving the movement of passengers, any industrial park, any office headquarters and any research facility; and

(6) any water distribution or irrigation system, including without limitation, pumps, distribution lines, transmission lines, towers, dams and similar facilities and equipment; and

F. "property" means any land, improvements thereon, buildings and any improvements thereto, machinery and equipment of any and all kinds necessary to the project, operating capital and any other personal properties deemed necessary in connection with the project. "

Section 2. Section 4-59-4 NMSA 1978 (being Laws 1975, Chapter 286, Section 4, as amended by Laws 1997, Chapter 216, Section 5 and also by Laws 1997, Chapter 226, Section 5) is amended to read:

addition to any other powers that it may now have, each county shall have the following powers:

A. to acquire, whether by construction, purchase, gift or lease, one or more projects, which shall be located within this state and shall be located within the county outside the boundaries of any incorporated municipality; provided, the county shall not acquire any electricity generation facility project unless the acquisition is approved by the local school board of the school district in which a project is located and the board of county commissioners, the local school board and the person proposing the project negotiate and determine the amount of an annual in-lieu tax payment to be made to the school district by the person proposing the project, for the period that the county owns and leases the project, and provided such approval shall not be unreasonably withheld;

B. to sell or lease or otherwise dispose of any or all of its projects upon such terms and conditions as the commission may deem advisable and as shall not conflict with the provisions of the County Industrial Revenue Bond Act; and

C. to issue revenue bonds for the purpose of defraying the cost of acquiring, by construction and purchase or either, any project and to secure the payment of such bonds, all as provided in the County Industrial Revenue Bond Act. No county shall have the power to operate any

project as a business or in any manner except as lessor thereof. "

Section 3. Section 7-4-10 NMSA 1978 (being Laws 1993, Chapter 153, Section 1) is amended to read:

"7-4-10. APPORTIONMENT OF BUSINESS INCOME. --

A. Except as provided in Subsection B of this section, all business income shall be apportioned to this state by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus the sales factor and the denominator of which is three.

B. For taxable years beginning prior to January 1, 2011, each taxpayer whose principal business activity is manufacturing may elect to have business income apportioned to this state by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus twice the sales factor and the denominator of which is four. To elect the method of apportionment provided by this subsection, the taxpayer shall notify the department of the election, in writing, no later than the date on which the taxpayer files the return for the first taxable year to which the election will apply. The election will apply to that taxable year and to each taxable year thereafter until the taxpayer notifies the department, in writing, that the election is terminated, except that the taxpayer shall not terminate the election until the method of apportioning business income provided by this subsection

has been used by the taxpayer for at least three consecutive taxable years, including a total of at least thirty-six calendar months. Notwithstanding any provisions of this subsection to the contrary, the taxpayer shall use the method of apportionment provided by Subsection A of this section for the taxable year unless:

(1) the taxpayer's corporate income tax liability for the taxable year, computed by the same method of apportionment used in the preceding taxable year, exceeds the corporate income tax liability for the taxpayer's immediately preceding taxable year; or

(2) the sum of the taxpayer's payroll factor and property factor for the taxable year exceeds the sum of the taxpayer's payroll factor and property factor for the taxpayer's base year. For purposes of this paragraph, "base year" means the taxpayer's first taxable year beginning on or after January 1, 1991.

C. For purposes of this section, "manufacturing" means combining or processing components or materials to increase their value for sale in the ordinary course of business, but does not include:

- (1) construction;
- (2) farming;
- (3) power generation other than electricity

generation at facilities in any class B county with:

- (a) a population of more than forty-

seven thousand but less than sixty thousand according to the 1990 federal decennial census and with a net taxable value for property taxation purposes for the 1999 property tax year of more than five hundred fifty million dollars (\$550, 000, 000);

(b) a population of less than twenty thousand according to the 1990 federal decennial census and with a net taxable value for property taxation purposes for the 1999 property tax year of more than two hundred ten million dollars (\$210, 000, 000) but less than four hundred million dollars (\$400, 000, 000);

(c) a population of more than fifteen thousand but less than nineteen thousand according to the 1990 federal decennial census and with a net taxable value for property taxation purposes for the 1999 property tax year of more than one hundred eighty million dollars (\$180, 000, 000) but less than two hundred forty million dollars (\$240, 000, 000);

(d) a population of more than forty-two thousand but less than forty-five thousand according to the 1990 federal decennial census and with a net taxable value for property taxation purposes for the 1999 property tax year of more than three hundred million dollars (\$300, 000, 000) but less than four hundred million dollars (\$400, 000, 000);

(e) a population of less than six

thousand according to the 1990 federal decennial census and with a net taxable value for property taxation purposes for the 1999 property tax year of more than one hundred million dollars (\$100,000,000); or

(f) a population of less than thirty-five thousand according to the 1990 federal decennial census and with a net taxable value for property taxation purposes for the 1999 property tax year of more than seven hundred million dollars (\$700,000,000); or

(4) processing natural resources, including hydrocarbons. "

Section 4. Section 7-9A-3 NMSA 1978 (being Laws 1979, Chapter 347, Section 3, as amended by Laws 1991, Chapter 159, Section 2 and also by Laws 1991, Chapter 162, Section 2) is amended to read:

"7-9A-3. DEFINITIONS. --As used in the Investment Credit Act:

A. "department" means the taxation and revenue department, the secretary of taxation and revenue or any employee of the department exercising authority lawfully delegated to that employee by the secretary;

B. "equipment" means an essential machine, mechanism or tool, or a component or fitting thereof, used directly and exclusively in a manufacturing operation and subject to depreciation for purposes of the Internal Revenue Code by the taxpayer carrying on the manufacturing

operation. "Equipment" does not include any vehicle that leaves the site of the manufacturing operation for purposes of transporting persons or property or any property for which the taxpayer claims the credit pursuant to Section 7-9-79 NMSA 1978;

C. "manufacturing" means combining or processing components or materials, including recyclable materials, to increase their value for sale in the ordinary course of business, including genetic testing and production, but not including:

(1) construction;

(2) farming;

(3) power generation other than electricity generation at facilities in any class B county with:

(a) a population of more than forty-seven thousand but less than sixty thousand according to the 1990 federal decennial census and with a net taxable value for property taxation purposes for the 1999 property tax year of more than five hundred fifty million dollars (\$550,000,000);

(b) a population of less than twenty thousand according to the 1990 federal decennial census and with a net taxable value for property taxation purposes for the 1999 property tax year of more than two hundred ten million dollars (\$210,000,000) but less than four hundred million dollars (\$400,000,000);

(c) a population of more than fifteen thousand but less than nineteen thousand according to the 1990 federal decennial census and with a net taxable value for property taxation purposes for the 1999 property tax year of more than one hundred eighty million dollars (\$180,000,000) but less than two hundred forty million dollars (\$240,000,000);

(d) a population of more than forty-two thousand but less than forty-five thousand according to the 1990 federal decennial census and with a net taxable value for property taxation purposes for the 1999 property tax year of more than three hundred million dollars (\$300,000,000) but less than four hundred million dollars (\$400,000,000);

(e) a population of less than six thousand according to the 1990 federal decennial census and with a net taxable value for property taxation purposes for the 1999 property tax year of more than one hundred million dollars (\$100,000,000); or

(f) a population of less than thirty-five thousand according to the 1990 federal decennial census and with a net taxable value for property taxation purposes for the 1999 property tax year of more than seven hundred million dollars (\$700,000,000); or

(4) processing natural resources, including hydrocarbons;

D. "manufacturing operation" means a plant, including a genetic testing and production facility, employing personnel to perform production tasks, in conjunction with equipment not previously existing at the site, to produce goods;

E. "recyclable materials" means materials that would otherwise become solid waste if not recycled and that can be collected, separated or processed and placed in use in the form of raw materials or products; and

F. "taxpayer" means a person liable for payment of any tax, a person responsible for withholding and payment over or for collection and payment over of any tax, or a person to whom an assessment has been made, if the assessment remains unabated or the amount thereof has not been paid. "
