SENATE BILL 739

45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001

INTRODUCED BY

Rod Adair

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 A GROSS RECEIPTS TAX DEDUCTION FOR THE SALE OF CONSTRUCTION SERVICES AND MATERIALS FOR CERTAIN ELECTRICITY GENERATION FACILITIES.

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

Section 1. 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. To encourage investment and employment in this state by manufacturers who do not anticipate substantial sales revenue within this state, 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 B 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.

B. Each taxpayer whose principal business activity is not manufacturing and each taxpayer whose principal business activity is manufacturing but who has not made the election provided in Subsection A of this section or has terminated such an election in accordance with the provisions of Subsection A of this section shall apportion business income 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.

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 <u>other than electricity generation at facilities in any class B county with a population of more than forty-seven thousand but less than sixty thousand according to the 1990 federal decennial census</u>

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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); or

(4) processing natural resources, including hydrocarbons."

Section 2. Section 7-9-51 NMSA 1978 (being Laws 1969, Chapter 144, Section 41, as amended by Laws 2000, Chapter 84, Section 3 and also by Laws 2000, Chapter 98, Section 1) is amended to read:

"7-9-51. DEDUCTION--GROSS RECEIPTS TAX--SALE OF TANGIBLE PERSONAL PROPERTY TO PERSONS ENGAGED IN THE CONSTRUCTION BUSINESS.--

A. Receipts from selling tangible personal property may be deducted from gross receipts if the sale is made to a person engaged in the construction business who delivers a nontaxable transaction certificate to the seller.

B. The buyer delivering the nontaxable transaction certificate must incorporate the tangible personal property as:

(1) an ingredient or component part of a construction project [~~which~~] that is subject to the gross receipts tax upon its completion or upon the completion of the overall construction project of which it is a part;

(2) an ingredient or component part of a construction project [~~which~~] that is subject to the gross

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receipts tax upon the sale in the ordinary course of business of the real property upon which it was constructed; [~~or~~]

(3) an ingredient or component part of a construction project that is located on the tribal territory of an Indian nation, tribe or pueblo; or

(4) an ingredient or component part of a project for construction of an electricity generation facility in a class B county with 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)."

Section 3. Section 7-9-52 NMSA 1978 (being Laws 1969, Chapter 144, Section 42, as amended by Laws 2000, Chapter 84, Section 4 and also by Laws 2000, Chapter 98, Section 2) is amended to read:

"7-9-52. DEDUCTION--GROSS RECEIPTS TAX--SALE OF CONSTRUCTION SERVICES TO PERSONS ENGAGED IN THE CONSTRUCTION BUSINESS.--

A. Receipts from selling a construction service may be deducted from gross receipts if the sale is made to a person engaged in the construction business who delivers a nontaxable transaction certificate to the person performing the construction service.

B. The buyer delivering the nontaxable transaction

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certificate must have the construction services performed upon:

(1) a construction project [~~which~~] that is subject to the gross receipts tax upon its completion or upon the completion of the overall construction project of which it is a part;

(2) a construction project [~~which~~] that is subject to the gross receipts tax upon the sale in the ordinary course of business of the real property upon which it was constructed; [~~or~~]

(3) a construction project that is located on the tribal territory of an Indian nation, tribe or pueblo; or

(4) an ingredient or component part of a project for construction of an electricity generation facility in a class B county with 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)."

Section 4. Section 7-9-54 NMSA 1978 (being Laws 1969, Chapter 144, Section 44, as amended by Laws 2000, Chapter 84, Section 5 and also by Laws 2000, Chapter 98, Section 3) is amended to read:

"7-9-54. DEDUCTION--GROSS RECEIPTS TAX--GOVERNMENTAL GROSS RECEIPTS TAX--SALES TO GOVERNMENTAL AGENCIES.--

A. Receipts from selling tangible personal property to the United States or New Mexico or any governmental unit or subdivision, agency, department or instrumentality thereof may be deducted from gross receipts or from governmental gross receipts. Unless contrary to federal law, the deduction provided by this subsection does not apply to:

(1) receipts from selling metalliferous mineral ore;

(2) receipts from selling tangible personal property that is or will be incorporated into a metropolitan redevelopment project created under the Metropolitan Redevelopment Code;

(3) receipts from selling tangible personal property that will become an ingredient or component part of a construction project other than a project financed by industrial revenue bonds for construction of an electricity generation facility in a class B county with 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); or

(4) that portion of the receipts from performing a "service", as defined in Subsection K of Section

7-9-3 NMSA 1978, that reflects the value of tangible personal property utilized or produced in performance of such service.

B. Receipts from selling tangible personal property for any purpose to an Indian tribe, nation or pueblo or any governmental subdivision, agency, department or instrumentality thereof for use on Indian reservations or pueblo grants may be deducted from gross receipts or from governmental gross receipts."

Section 5. 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 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); 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."

Section 6. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2001.

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