

HOUSE TAXATION AND REVENUE COMMITTEE SUBSTITUTE FOR
HOUSE BILLS 143, 373 & 377

45TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2002

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 CERTAIN ELECTRICITY GENERATION FACILITY AND
501(c) (3) CORPORATION PROJECTS IN COUNTIES AND MUNICIPALITIES;
PROVIDING A DEDUCTION FROM GROSS RECEIPTS FOR CERTAIN SALES OF
ENERGY GENERATION EQUIPMENT; REPEALING LAWS 2001, CHAPTER 57,
SECTION 1 AND LAWS 2001, CHAPTER 284, SECTION 3.

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

Section 1. Section 3-32-1 NMSA 1978 (being Laws 1965,
Chapter 300, Section 14-31-1, as amended) is amended to read:

"3-32-1. INDUSTRIAL REVENUE BOND ACT--DEFINITIONS.--

Wherever used in the Industrial Revenue Bond Act unless a

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1 different meaning clearly appears in the context, the
2 following terms whether used in the singular or plural shall
3 be given the following respective interpretations:

4 A. "municipality" means any city, town or village
5 in the state of New Mexico;

6 B. "project" means any land and building or other
7 improvements thereon, the acquisition by or for a New Mexico
8 corporation of the assets or stock of an existing business or
9 corporation located outside the state of New Mexico to be
10 relocated within or near the municipality in the state of New
11 Mexico and all real and personal properties deemed necessary
12 in connection therewith, whether or not now in existence,
13 which shall be suitable for use by the following or by any
14 combination of two or more thereof:

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

18 (2) any commercial enterprise in storing,
19 warehousing, distributing or selling products of agriculture,
20 mining or industry but does not include facilities designed
21 for the sale of goods or commodities at retail or distribution
22 to the public of electricity, gas, water or telephone or other
23 services commonly classified as public utilities;

24 (3) any business in which all or part of the
25 activities of ~~[such]~~ the business involve the supplying of

1 services to the general public or to governmental agencies or
2 to a specific industry or customer but does not include
3 establishments primarily engaged in the sale of goods or
4 commodities at retail; [~~and~~]

5 (4) any water distribution or irrigation
6 system, including without limitation, pumps, distribution
7 lines, transmission lines, towers, dams and similar facilities
8 and equipment, designed to provide water to any vineyard or
9 winery;

10 (5) any electric generation facility other
11 than one for which both location approval and a certificate of
12 convenience and necessity are required prior to commencing
13 construction or operation of the facility, pursuant to the
14 Public Utility Act and Electric Utility Industry Restructuring
15 Act of 1999; and

16 (6) any 501(c)(3) corporation;

17 C. "governing body" means the board or body in
18 which the legislative powers of the municipality are vested;

19 D. "property" means any land, improvements
20 thereon, buildings and any improvements thereto, machinery and
21 equipment of any and all kinds necessary to the project,
22 operating capital and any other personal properties deemed
23 necessary in connection with the project;

24 E. "mortgage" means a mortgage or a mortgage and
25 deed of trust or the pledge and hypothecation of any assets as

1 collateral security;

2 F. "health care services" means the diagnosis or
3 treatment of sick or injured persons or medical research and
4 includes the ownership, operation, maintenance, leasing and
5 disposition of health care facilities such as hospitals,
6 clinics, laboratories, x-ray centers and pharmacies and, for
7 any small municipality only, [~~includes~~] office facilities for
8 physicians; [~~and~~]

9 G. "refinance a hospital or 501(c)(3) corporation
10 project" means the issuance of bonds by a municipality and the
11 use of all or substantially all of the proceeds to liquidate
12 any obligations previously incurred to finance or aid in
13 financing a project of any nonprofit corporation engaged in
14 health care services, including nursing homes, or of any 501
15 (c)(3) corporation, which would constitute a project under the
16 Industrial Revenue Bond Act had it been originally undertaken
17 and financed by a municipality pursuant to the Industrial
18 Revenue Bond Act; and

19 H. "501(c)(3) corporation" means a corporation
20 that demonstrates to the taxation and revenue department that
21 it has been granted exemption from the federal income tax as
22 an organization described in Section 501(c)(3) of the Internal
23 Revenue Code of 1986, as amended or renumbered."

24 Section 2. Section 3-32-5 NMSA 1978 (being Laws 1967,
25 Chapter 84, Section 3, as amended) is amended to read:

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1 "3-32-5. ADDITIONAL LEGISLATIVE INTENT.--It is further
2 the legislative intent that the Industrial Revenue Bond Act
3 authorize municipalities to refinance hospital or 501(c)(3)
4 corporation projects and projects of any independent,
5 nonprofit, nonsectarian four-year college or university
6 accredited by the north central association of colleges and
7 schools, to acquire, own, lease or sell projects for the
8 purpose of promoting the local economy and improving local
9 health and the general welfare by inducing private
10 institutions of higher education, [~~and~~] nonprofit corporations
11 engaged in health care services, including nursing homes,
12 501(c)(3) corporations and, for any small municipality only,
13 office facilities for physicians, to provide more adequate
14 facilities of higher education and to provide more adequate
15 health care services in this state and by inducing mass
16 transit or other transportation activities, industrial parks,
17 office headquarters and research and development activities to
18 locate or expand in this state. It is not intended to
19 authorize any municipality to own or lease projects for retail
20 business or by itself to operate any private institution of
21 higher education; [~~or any~~] nonprofit corporation engaged in
22 health care services, including nursing homes; 501(c)(3)
23 corporation; [~~or~~] industrial parks; office headquarters; or
24 research and development facilities."

25 Section 3. Section 3-32-6 NMSA 1978 (being Laws 1965,

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1 Chapter 300, Section 14-31-3, as amended) is amended to read:

2 "3-32-6. ADDITIONAL POWERS CONFERRED ON

3 MUNICIPALITIES. --In addition to any other powers which it may
4 now have, each municipality shall have the following powers:

5 A. to acquire, whether by construction, purchase,
6 gift or lease, one or more projects which shall be located
7 within this state and may be located within or without the
8 municipality or partially within or partially without the
9 municipality, but which shall not be located more than fifteen
10 miles outside of the corporate limits of the municipality;
11 provided that the municipality shall not acquire any
12 electricity generation facility project unless the acquisition
13 is approved by the local school board of the school district
14 in which a project is located and the governing body, the
15 local school board and the person proposing the project
16 negotiate and determine the amount of an annual in-lieu tax
17 payment to be made to the school district by the person
18 proposing the project, for the period that the municipality
19 owns and leases the project, and provided such approval shall
20 not be unreasonably withheld;

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

25 C. to issue revenue bonds for the purpose of

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1 defraying the cost of acquiring by construction and purchase
2 or either any project and to secure the payment of such bonds,
3 all as provided in the Industrial Revenue Bond Act. No
4 municipality shall have the power to operate any project as a
5 business or in any manner except as lessor;

6 D. to refinance one or more hospital or 501(c)(3)
7 corporation projects and to acquire any such hospital or
8 501(c)(3) corporation project whether by construction,
9 purchase, gift or lease, which hospital or 501(c)(3)
10 corporation project shall be located within this state and may
11 be located within or without the municipality or partially
12 within or partially without the municipality, but which shall
13 not be located more than fifteen miles outside of the
14 corporate limits of the municipality, and to issue revenue
15 bonds to refinance and acquire a hospital or 501(c)(3)
16 corporation project and to secure the payment of such bonds,
17 all as provided in the Industrial Revenue Bond Act. No
18 municipality shall have the power to operate any hospital or
19 501(c)(3) corporation project as a business or in any manner
20 except as lessor; and

21 E. to refinance one or more projects of any
22 private institution of higher education and to acquire any
23 such project, whether by construction, purchase, gift or
24 lease; provided that the project shall be located within this
25 state and may be located within or without the municipality or

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1 partially within or partially without the municipality, but
2 the project shall not be located more than fifteen miles
3 outside of the corporate limits of the municipality, and to
4 issue revenue bonds to refinance and acquire any project of
5 any private institution of higher education and to secure the
6 payment of such bonds. No municipality shall have the power
7 to operate any project of any private institution of higher
8 education as a business or in any manner except as lessor. "

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

11 "4-59-2. DEFINITIONS.--As used in the County Industrial
12 Revenue Bond Act, unless the context clearly indicates
13 otherwise:

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

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

18 C. "501(c)(3) corporation" means a corporation
19 that demonstrates to the taxation and revenue department that
20 it has been granted exemption from the federal income tax as
21 an organization described in Section 501(c)(3) of the Internal
22 Revenue Code of 1986, as amended or renumbered;

23 [~~C.~~] D. "health care services" means the diagnosis
24 or treatment of sick or injured persons or medical research
25 and includes the ownership, operation, maintenance, leasing

1 and disposition of health care facilities, such as hospitals,
2 clinics, laboratories, x-ray centers and pharmacies;

3 ~~[D-]~~ E. "mortgage" means a mortgage or a mortgage
4 and deed of trust or the pledge and hypothecation of any
5 assets as collateral security;

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

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

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

25 (a) water utilities; and

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1 ~~[(b) electricity generation facilities~~
2 ~~in any class B county with:~~ 1) a population of more than
3 ~~forty-seven thousand but less than sixty thousand according to~~
4 ~~the 1990 federal decennial census and with a net taxable value~~
5 ~~for property taxation purposes for the 1999 property tax year~~
6 ~~of more than five hundred fifty million dollars~~
7 ~~(\$550,000,000); 2) a population of less than twenty thousand~~
8 ~~according to the 1990 federal decennial census and with a net~~
9 ~~taxable value for property taxation purposes for the 1999~~
10 ~~property tax year of more than two hundred ten million dollars~~
11 ~~(\$210,000,000) but less than four hundred million dollars~~
12 ~~(\$400,000,000); 3) a population of more than fifteen thousand~~
13 ~~but less than nineteen thousand according to the 1990 federal~~
14 ~~decennial census and with a net taxable value for property~~
15 ~~taxation purposes for the 1999 property tax year of more than~~
16 ~~one hundred eighty million dollars (\$180,000,000) but less~~
17 ~~than two hundred forty million dollars (\$240,000,000); 4) a~~
18 ~~population of more than forty-two thousand but less than~~
19 ~~forty-five thousand according to the 1990 federal decennial~~
20 ~~census and with a net taxable value for property taxation~~
21 ~~purposes for the 1999 property tax year of more than three~~
22 ~~hundred million dollars (\$300,000,000) but less than four~~
23 ~~hundred million dollars (\$400,000,000); 5) a population of~~
24 ~~less than six thousand according to the 1990 federal decennial~~
25 ~~census and with a net taxable value for property taxation~~

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1 ~~purposes for the 1999 property tax year of more than one~~
2 ~~hundred million dollars (\$100,000,000); or 6) a population of~~
3 ~~less than thirty-five thousand according to the 1990 federal~~
4 ~~decennial census and with a net taxable value for property~~
5 ~~taxation purposes for the 1999 property tax year of more than~~
6 ~~seven hundred million dollars (\$700,000,000);]~~

7 (b) any electric generation facility
8 other than one for which both location approval and a
9 certificate of convenience and necessity are required prior to
10 commencing construction or operation of the facility, pursuant
11 to the Public Utility Act and the Electric Utility Industry
12 Restructuring Act of 1999;

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

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

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

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

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1 (7) any 501(c)(3) corporation; and

2 [~~F.~~] G. "property" means any land, improvements
3 thereon, buildings and any improvements thereto, machinery and
4 equipment of any and all kinds necessary to the project,
5 operating capital and any other personal properties deemed
6 necessary in connection with the project. "

7 "Section 5. Section 4-59-3 NMSA 1978 (being Laws 1975,
8 Chapter 286, Section 3) is amended to read:

9 "4-59-3. LEGISLATIVE INTENT.--It is the intent of the
10 legislature by the passage of the County Industrial Revenue
11 Bond Act to authorize counties to acquire, own, lease or sell
12 projects for the purpose of promoting industry and trade by
13 inducing manufacturing, industrial and commercial enterprises
14 to locate or expand in this state, promoting the use of the
15 agricultural products and natural resources of this state and
16 promoting a sound and proper balance in this state between
17 agriculture, commerce and industry. Further, it is the intent
18 of the legislature that counties may be able to promote the
19 local health and general welfare by inducing nonprofit
20 corporations engaged in health care services and 501(c)(3)
21 corporations to locate, relocate, modernize or expand in this
22 state and by inducing mass transit or other transportation
23 activities, industrial parks, office headquarters and research
24 and development activities to locate or expand in this state.
25 It is intended that each project be self-liquidating. It is

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1 not intended that any county itself be authorized to operate
2 any manufacturing, industrial or commercial enterprise or any
3 nonprofit corporation engaged in health care services or any
4 501(c)(3) corporation or industrial parks, office headquarters
5 or research and development facilities. "

6 Section 6. Section 7-4-10 NMSA 1978 (being Laws 1993,
7 Chapter 153, Section 1, as amended by Laws 2001, Chapter 57,
8 Section 1 and by Laws 2001, Chapter 284, Section 3 and also by
9 Laws 2001, Chapter 337, Section 1) is amended to read:

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

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

16 B. For taxable years beginning prior to January 1,
17 2011, each taxpayer whose principal business activity is
18 manufacturing may elect to have business income apportioned to
19 this state by multiplying the income by a fraction, the
20 numerator of which is the property factor plus the payroll
21 factor plus twice the sales factor and the denominator of
22 which is four. To elect the method of apportionment provided
23 by this subsection, the taxpayer shall notify the department
24 of the election, in writing, no later than the date on which
25 the taxpayer files the return for the first taxable year to

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1 which the election will apply. The election will apply to
2 that taxable year and to each taxable year thereafter until
3 the taxpayer notifies the department, in writing, that the
4 election is terminated, except that the taxpayer shall not
5 terminate the election until the method of apportioning
6 business income provided by this subsection has been used by
7 the taxpayer for at least three consecutive taxable years,
8 including a total of at least thirty-six calendar months.
9 Notwithstanding any provisions of this subsection to the
10 contrary, the taxpayer shall use the method of apportionment
11 provided by Subsection A of this section for the taxable year
12 unless:

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

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

24 C. For purposes of this section, "manufacturing"
25 means combining or processing components or materials to

1 increase their value for sale in the ordinary course of
2 business, but does not include:

- 3 (1) construction;
- 4 (2) farming;
- 5 (3) power generation, except for electricity
6 generation at a facility other than one for which both
7 location approval and a certificate of convenience and
8 necessity are required prior to commencing construction or
9 operation of the facility, pursuant to the Public Utility Act
10 and the Electric Utility Industry Restructuring Act of 1999;
11 or

12 (4) processing natural resources, including
13 hydrocarbons. "

14 Section 7. Section 7-9A-3 NMSA 1978 (being Laws 1979,
15 Chapter 347, Section 3, as amended) is amended to read:

16 "7-9A-3. DEFINITIONS. -- As used in the Investment Credit
17 Act:

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

22 B. "equipment" means an essential machine,
23 mechanism or tool, or a component or fitting thereof, used
24 directly and exclusively in a manufacturing operation and
25 subject to depreciation for purposes of the Internal Revenue

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1 Code by the taxpayer carrying on the manufacturing operation.
2 "Equipment" does not include any vehicle that leaves the site
3 of the manufacturing operation for purposes of transporting
4 persons or property or any property for which the taxpayer
5 claims the credit pursuant to Section 7-9-79 NMSA 1978;

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

11 (1) construction;

12 (2) farming;

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

15 (a) ~~a population of more than forty-~~
16 ~~seven thousand but less than sixty thousand according to the~~
17 ~~1990 federal decennial census and with a net taxable value for~~
18 ~~property taxation purposes for the 1999 property tax year of~~
19 ~~more than five hundred fifty million dollars (\$550,000,000);~~

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

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1 ~~(c) a population of more than fifteen~~
2 ~~thousand but less than nineteen thousand according to the 1990~~
3 ~~federal decennial census and with a net taxable value for~~
4 ~~property taxation purposes for the 1999 property tax year of~~
5 ~~more than one hundred eighty million dollars (\$180,000,000)~~
6 ~~but less than two hundred forty million dollars~~
7 ~~(\$240,000,000);~~

8 ~~(d) a population of more than forty-two~~
9 ~~thousand but less than forty-five thousand according to the~~
10 ~~1990 federal decennial census and with a net taxable value for~~
11 ~~property taxation purposes for the 1999 property tax year of~~
12 ~~more than three hundred million dollars (\$300,000,000) but~~
13 ~~less than four hundred million dollars (\$400,000,000);~~

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

19 ~~(f) a population of less than thirty-~~
20 ~~five thousand according to the 1990 federal decennial census~~
21 ~~and with a net taxable value for property taxation purposes~~
22 ~~for the 1999 property tax year of more than seven hundred~~
23 ~~million dollars (\$700,000,000)], except for electricity~~
24 ~~generation at a facility other than one for which both~~
25 ~~location approval and a certificate of convenience and~~

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1 necessity are required prior to commencing construction or
2 operation of the facility, pursuant to the Public Utility Act
3 and the Electric Utility Industry Restructuring Act of 1999;
4 or

5 (4) processing natural resources, including
6 hydrocarbons;

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

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

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

21 Section 8. A new section of the Gross Receipts and
22 Compensating Tax Act is enacted to read:

23 "[NEW MATERIAL] DEDUCTION--GROSS RECEIPTS TAX--WIND
24 ENERGY GENERATION EQUIPMENT--SALES TO GOVERNMENT AGENCIES.--
25 Receipts from selling wind generation nacelles, rotors or

1 related equipment to the United States or New Mexico or any
2 governmental unit or subdivision, agency, department or
3 instrumentality thereof, if such equipment is installed on a
4 supporting structure, may be deducted from gross receipts. "

5 Section 9. REPEAL. -- Laws 2001, Chapter 57, Section 1
6 and Laws 2001, Chapter 284, Section 3 are repealed.

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