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HOUSE BILL 57

50TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2012

INTRODUCED BY

Anna M. Crook

FOR THE REVENUE STABILIZATION AND TAX POLICY COMMITTEE

AN ACT

RELATING TO COMMUNITY DEVELOPMENT; INCLUDING SALE-LEASEBACK
FINANCING OF ASSETS FOR COMMERCIAL SOLAR ELECTRICITY
GENERATION; CLARIFYING CERTAIN DEFINITIONS IN THE COMMUNITY
DEVELOPMENT INCENTIVE ACT.

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

SECTION 1. Section 3-64-2 NMSA 1978 (being Laws 1991,
Chapter 163, Section 2, as amended by Laws 2003, Chapter 293,
Section 2 and by Laws 2003, Chapter 405, Section 2) is amended
to read:

"3-64-2. DEFINITIONS.--

A. As used in the Community Development Incentive
Act:

(1) "commencement of commercial operations"
occurs when the new business facility is first available for

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1 use by the taxpayer or first capable of being used by the
2 taxpayer in the revenue-producing enterprise in which the
3 taxpayer intends to use the new business facility;

4 (2) "facility" means any factory, mill, plant,
5 refinery, warehouse, dairy, feedlot, building or complex of
6 buildings located within the state, including the land on which
7 the facility is located and all machinery, equipment and other
8 real and tangible personal property located at or within the
9 facility and used in connection with the operation of the
10 facility;

11 (3) "new business facility" means a facility
12 that satisfies the following requirements:

13 (a) the facility is employed by the
14 taxpayer in the operation of a revenue-producing enterprise;
15 the facility shall not be considered a "new business facility"
16 in the hands of the taxpayer if the taxpayer's only activity
17 with respect to the facility is to lease it to another person
18 unless the lease is for assets that comprise a facility that
19 produces electricity from a solar panel installation; if the
20 taxpayer employs only a portion of the facility in the
21 operation of a revenue-producing enterprise and leases another
22 portion of the facility to another person or does not otherwise
23 use such other portions in the operation of a revenue-producing
24 enterprise, the portion employed by the taxpayer in the
25 operation of a revenue-producing enterprise shall be considered

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1 a "new business facility" if the requirements of Subparagraphs
2 (b), (c) and (d) of this paragraph are satisfied;

3 (b) the facility is acquired by or
4 leased to the taxpayer on or after July 1, 2003; provided, the
5 facility shall be deemed to have been acquired by or leased to
6 the taxpayer on or after the specified date if the transfer of
7 title to the taxpayer, the transfer of possession pursuant to a
8 binding contract to transfer title to the taxpayer or the
9 commencement of the term of the lease to the taxpayer occurs on
10 or after that date or if the facility is constructed, erected
11 or installed by or on behalf of the taxpayer, the construction,
12 erection or installation is completed on or after that date;

13 (c) if the facility was acquired by the
14 taxpayer from another person and the facility was employed for
15 a period of more than ninety days, immediately prior to the
16 transfer of title to the facility to the taxpayer or to the
17 commencement of the term of the lease of the facility to the
18 taxpayer, by any other person in the operation of a revenue-
19 producing enterprise, the taxpayer does not continue the
20 operation of the same or a substantially identical revenue-
21 producing enterprise at the facility; and

22 (d) the facility is not a replacement
23 business facility;

24 (4) "new business facility employee" means a
25 person employed by the taxpayer in the operation of a new

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1 business facility during the taxable year for which the
2 exemption authorized by Section 3-64-3 NMSA 1978 is granted; a
3 person shall be considered to have been so employed if the
4 person performs duties in connection with the operation of the
5 new business facility on:

6 (a) a regular, full-time basis;

7 (b) a part-time basis if the person is
8 customarily performing the described duties at least twenty
9 hours per week throughout the taxable year; or

10 (c) a seasonal basis if the person
11 performs the described duties for substantially all of the
12 season customary for the position in which the person is
13 employed.

14 The number of new business facility employees during any
15 property tax year shall be determined by dividing by twelve the
16 sum of the number of new business facility employees on the
17 last business day of each month of that year. If the new
18 business facility is in operation for less than the entire
19 property tax year, the number of new business facility
20 employees shall be determined by dividing the sum of the number
21 of new business facility employees on the last business day of
22 each full calendar month during the portion of the property tax
23 year during which the new business facility was in operation by
24 the number of full calendar months during that period;

25 (5) "new business facility investment" means

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1 the value of the real and tangible personal property, except
2 inventory or property held for sale to customers in the
3 ordinary course of the taxpayer's business, that constitutes
4 the new business facility or that is used by the taxpayer in
5 the operation of the new business facility during the property
6 tax year for which the exemption authorized by Section 3-64-3
7 NMSA 1978 is granted and the value of that property during the
8 year shall be:

9 (a) its original cost if owned by the
10 taxpayer; or

11 (b) eight times the net annual rental
12 rate if leased by the taxpayer; the "net annual rental rate" is
13 the annual rental rate paid by the taxpayer, less any annual
14 rental rate received by the taxpayer from subrentals;

15 (6) "related taxpayer" means:

16 (a) a corporation, partnership, limited
17 liability company, trust or association controlled by the
18 taxpayer;

19 (b) an individual, corporation, limited
20 liability company, partnership, trust or association under the
21 control of the taxpayer; or

22 (c) a corporation, limited liability
23 company, partnership, trust or association controlled by an
24 individual, corporation, limited liability company,
25 partnership, trust or association under the control of the

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1 taxpayer.

2 For the purposes of this paragraph, "control of a
3 corporation" means ownership, directly or indirectly, of stock
4 possessing at least eighty percent of the total combined voting
5 power of all classes of stock entitled to vote and at least
6 eighty percent of all other classes of stock of the
7 corporation; "control of a partnership, limited liability
8 company or association" means ownership of at least eighty
9 percent of the capital or profits interest in such partnership,
10 limited liability company or association; and "control of a
11 trust" means ownership, directly or indirectly, of at least
12 eighty percent of the beneficial interest in the principal or
13 income of the trust;

14 (7) "replacement business facility" means a
15 facility as defined in Paragraph (3) of this subsection and
16 referred to in this paragraph as a "new facility" that replaces
17 another facility, referred to in this paragraph as an "old
18 facility", located within the state in which the taxpayer or a
19 related taxpayer previously operated but discontinued operating
20 on or before the close of the first property tax year in which
21 the exemption authorized by Section 3-64-3 NMSA 1978 is
22 claimed; a new facility shall be deemed to replace an old
23 facility if the following conditions are met:

24 (a) the old facility was operated by the
25 taxpayer or a related taxpayer for more than three full

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1 property tax years out of the five property tax years next
2 preceding the property tax year in which commencement of
3 commercial operations occurs at the new facility; and

4 (b) the old facility was employed by the
5 taxpayer or a related taxpayer in the operation of a revenue-
6 producing enterprise and the taxpayer continues the operation
7 of the same or a substantially identical revenue-producing
8 enterprise at the new facility.

9 Notwithstanding the provisions of Subparagraph (a) of this
10 paragraph, a facility shall not be considered a "replacement
11 business facility" if the taxpayer's investment in the new
12 facility exceeds three million dollars (\$3,000,000) or, if
13 less, three hundred percent of the investment in the old
14 facility by the taxpayer or related taxpayer. The investment
15 in the new facility and in the old facility shall be determined
16 in the manner provided in Paragraph (5) of this subsection;

17 (8) "revenue-producing enterprise" means:

18 (a) the production, assembly,
19 fabrication, manufacture or processing of any agricultural,
20 mineral or manufactured product;

21 (b) the storage, warehousing,
22 distribution or sale of any products of agriculture, mining or
23 manufacturing;

24 (c) the feeding of livestock at a
25 feedlot;

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1 (d) the operation of laboratories or
2 other facilities for scientific, agricultural animal husbandry
3 or industrial research development;

4 (e) the generation of electricity;

5 (f) the performance of services of any
6 type;

7 (g) the administrative management of any
8 of the activities listed in Subparagraphs (a) through (f) of
9 this paragraph; or

10 (h) any combination of any of the
11 activities referred to in Subparagraphs (a) through (g) of this
12 paragraph; and

13 (9) "same or a substantially identical
14 revenue-producing enterprise" means a revenue-producing
15 enterprise in which the products produced or sold, the services
16 performed or the activities conducted are the same in character
17 and use and are produced, sold, performed or conducted in the
18 same manner and to or for the same types of customers as the
19 products, services or activities produced, sold, performed or
20 conducted in another revenue-producing enterprise.

21 B. The new business facility investment shall be
22 determined by dividing by twelve the sum of the total value of
23 such property on the last business day of each calendar month
24 of the property tax year. If the new business facility is in
25 operation for less than an entire property tax year, the new

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1 business facility investment shall be determined by dividing
2 the sum of the total value of the property on the last business
3 day of each full calendar month during the portion of the
4 property tax year during which the new business facility was in
5 operation by the number of full calendar months during that
6 period.

7 C. If a facility that does not constitute a new
8 business facility is expanded by the taxpayer, the expansion
9 shall be considered a separate facility eligible for the
10 exemption authorized by Section 3-64-3 NMSA 1978 if:

11 (1) the taxpayer's investment in the expansion
12 exceeds one million dollars (\$1,000,000) or, if less, one
13 hundred percent of its investment in the original facility
14 prior to expansion; and

15 (2) the expansion otherwise constitutes a new
16 business facility.

17 The taxpayer's investment in the expansion and in the
18 original facility prior to expansion shall be determined in the
19 manner provided in Paragraph (5) of Subsection A of this
20 section.

21 D. If a facility that does not constitute a new
22 business facility is expanded by the taxpayer, the expansion
23 shall be considered a separate facility for purposes of the
24 exemption granted by Section 3-64-3 NMSA 1978 if:

25 (1) the expansion results in the employment of

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1 ten or more new business facility employees over and above the
2 average number of employees employed by the taxpayer in the
3 county or municipality granting the exemption [~~by the taxpayer~~]
4 during the twelve months immediately prior to the expansion,
5 computed pursuant to Paragraph (4) of Subsection A of this
6 section; and

7 (2) the expansion otherwise constitutes a new
8 business facility."

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