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HOUSE BILL 373

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

INTRODUCED BY

Ben Lujan

FOR THE REVENUE STABILIZATION AND TAX POLICY COMMITTEE

AN ACT

**RELATING TO TAXATION; ADDING ELECTRICITY GENERATION AT
FACILITIES IN AN ADDITIONAL COUNTY TO THE DEFINITION OF
"PROJECT" IN THE COUNTY INDUSTRIAL REVENUE BOND ACT AND TO THE
DEFINITION OF "MANUFACTURING" FOR PURPOSES OF THE INVESTMENT
CREDIT AND APPORTIONMENT OF BUSINESS INCOME; CLARIFYING
MULTIPLE AMENDMENTS TO A SECTION OF THE UNIFORM DIVISION OF
INCOME FOR TAX PURPOSES ACT.**

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

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1 county;

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

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

9 D. "mortgage" means a mortgage or a mortgage and
10 deed of trust or the pledge and hypothecation of any assets as
11 collateral security;

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

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

24 (2) any commercial enterprise in storing,
25 warehousing, distributing or selling products of agriculture,

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1 mining or industry, but does not include facilities designed
2 for the sale or distribution to the public of electricity,
3 gas, telephone or other services commonly classified as public
4 utilities, except for:

5 (a) water utilities; and

6 (b) electricity generation facilities

7 in any class B county with: 1) a population of more than
8 forty-seven thousand but less than sixty thousand according to
9 the 1990 federal decennial census and with a net taxable value
10 for property taxation purposes for the 1999 property tax year
11 of more than five hundred fifty million dollars

12 (\$550,000,000); 2) a population of less than twenty thousand
13 according to the 1990 federal decennial census and with a net
14 taxable value for property taxation purposes for the 1999
15 property tax year of more than two hundred ten million dollars
16 (\$210,000,000) but less than four hundred million dollars

17 (\$400,000,000); 3) a population of more than fifteen thousand
18 but less than nineteen thousand according to the 1990 federal
19 decennial census and with a net taxable value for property
20 taxation purposes for the 1999 property tax year of more than
21 one hundred eighty million dollars (\$180,000,000) but less
22 than two hundred forty million dollars (\$240,000,000); 4) a
23 population of more than forty-two thousand but less than
24 forty-five 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 three
2 hundred million dollars (\$300,000,000) but less than four
3 hundred million dollars (\$400,000,000); 5) a population of
4 less than six thousand according to the 1990 federal decennial
5 census and with a net taxable value for property taxation
6 purposes for the 1999 property tax year of more than one
7 hundred million dollars (\$100,000,000); ~~or~~ 6) a population
8 of less than thirty-five thousand according to the 1990
9 federal decennial census and with a net taxable value for
10 property taxation purposes for the 1999 property tax year of
11 more than seven hundred million dollars (\$700,000,000); or 7)
12 a population of more than ten thousand but less than twelve
13 thousand according to the 1990 federal decennial census and
14 with a net taxable value for property taxation purposes for
15 the 1999 property tax year of less than one hundred million
16 dollars (\$100,000,000);

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

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

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

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

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

10 Section 2. Section 7-4-10 NMSA 1978 (being Laws 1993,
11 Chapter 153, Section 1, as amended by Laws 2001, Chapter 57,
12 Section 1 and by Laws 2001, Chapter 284, Section 3 and also by
13 Laws 2001, Chapter 337, Section 1) is amended to read:

14 "7-4-10. APPORTIONMENT OF BUSINESS INCOME. --

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

20 B. For taxable years beginning prior to January 1,
21 2011, each taxpayer whose principal business activity is
22 manufacturing may elect to have business income apportioned to
23 this state by multiplying the income by a fraction, the
24 numerator of which is the property factor plus the payroll
25 factor plus twice the sales factor and the denominator of

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1 which is four. To elect the method of apportionment provided
2 by this subsection, the taxpayer shall notify the department
3 of the election, in writing, no later than the date on which
4 the taxpayer files the return for the first taxable year to
5 which the election will apply. The election will apply to
6 that taxable year and to each taxable year thereafter until
7 the taxpayer notifies the department, in writing, that the
8 election is terminated, except that the taxpayer shall not
9 terminate the election until the method of apportioning
10 business income provided by this subsection has been used by
11 the taxpayer for at least three consecutive taxable years,
12 including a total of at least thirty-six calendar months.
13 Notwithstanding any provisions of this subsection to the
14 contrary, the taxpayer shall use the method of apportionment
15 provided by Subsection A of this section for the taxable year
16 unless:

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

22 (2) the sum of the taxpayer's payroll factor
23 and property factor for the taxable year exceeds the sum of
24 the taxpayer's payroll factor and property factor for the
25 taxpayer's base year. For purposes of this paragraph, "base

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1 year" means the taxpayer's first taxable year beginning on or
2 after January 1, 1991.

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

7 (1) construction;

8 (2) farming;

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

11 (a) a population of more than forty-
12 seven thousand but less than sixty thousand according to the
13 1990 federal decennial census and with a net taxable value for
14 property taxation purposes for the 1999 property tax year of
15 more than five hundred fifty million dollars (\$550,000,000);

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

22 (c) a population of more than fifteen
23 thousand but less than nineteen thousand according to the 1990
24 federal decennial census and with a net taxable value for
25 property taxation purposes for the 1999 property tax year of

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1 more than one hundred eighty million dollars (\$180,000,000)
2 but less than two hundred forty million dollars
3 (\$240,000,000);

4 (d) a population of more than forty-two
5 thousand but less than forty-five thousand according to the
6 1990 federal decennial census and with a net taxable value for
7 property taxation purposes for the 1999 property tax year of
8 more than three hundred million dollars (\$300,000,000) but
9 less than four hundred million dollars (\$400,000,000);

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

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

20 (g) a population of more than ten
21 thousand but less than twelve thousand according to the 1990
22 federal decennial census and with a net taxable value for
23 property taxation purposes for the 1999 property tax year of
24 less than one hundred million dollars (\$100,000,000); or

25 (4) processing natural resources, including

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1 hydrocarbons. "

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

4 "7-9A-3. DEFINITIONS. --As used in the Investment Credit
5 Act:

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

10 B. "equipment" means an essential machine,
11 mechanism or tool, or a component or fitting thereof, used
12 directly and exclusively in a manufacturing operation and
13 subject to depreciation for purposes of the Internal Revenue
14 Code by the taxpayer carrying on the manufacturing operation.
15 "Equipment" does not include any vehicle that leaves the site
16 of the manufacturing operation for purposes of transporting
17 persons or property or any property for which the taxpayer
18 claims the credit pursuant to Section 7-9-79 NMSA 1978;

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

24 (1) construction;

25 (2) farming;

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

3 (a) a population of more than forty-
4 seven thousand but less than sixty thousand according to the
5 1990 federal decennial census and with a net taxable value for
6 property taxation purposes for the 1999 property tax year of
7 more than five hundred fifty million dollars (\$550, 000, 000);

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

14 (c) a population of more than fifteen
15 thousand but less than nineteen thousand according to the 1990
16 federal decennial census and with a net taxable value for
17 property taxation purposes for the 1999 property tax year of
18 more than one hundred eighty million dollars (\$180, 000, 000)
19 but less than two hundred forty million dollars
20 (\$240, 000, 000);

21 (d) a population of more than forty-two
22 thousand but less than forty-five thousand according to the
23 1990 federal decennial census and with a net taxable value for
24 property taxation purposes for the 1999 property tax year of
25 more than three hundred million dollars (\$300, 000, 000) but

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1 less than four hundred million dollars (\$400,000,000);

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

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

12 (g) a population of more than ten
13 thousand but less than twelve thousand according to the 1990
14 federal decennial census and with a net taxable value for
15 property taxation purposes for the 1999 property tax year of
16 less than one hundred million dollars (\$100,000,000); or

17 (4) processing natural resources, including
18 hydrocarbons;

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

24 E. "recyclable materials" means materials that
25 would otherwise become solid waste if not recycled and that

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1 can be collected, separated or processed and placed in use in
2 the form of raw materials or products; and

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