

SENATE CONSERVATION COMMITTEE SUBSTITUTE FOR
SENATE BILL 46

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
PROJECTS IN COUNTIES AND MUNICIPALITIES; 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
different meaning clearly appears in the context, the
following terms whether used in the singular or plural shall

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1 be given the following respective interpretations:

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

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

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

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

22 (3) any business in which all or part of the
23 activities of ~~[such]~~ the business involve the supplying of
24 services to the general public or to governmental agencies or
25 to a specific industry or customer but does not include

1 establishments primarily engaged in the sale of goods or
2 commodities at retail; [~~and~~]

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

8 (5) any electricity generation facility that
9 does not provide retail electric service to New Mexico
10 customers;

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

13 D. "property" means any land, improvements
14 thereon, buildings and any improvements thereto, machinery and
15 equipment of any and all kinds necessary to the project,
16 operating capital and any other personal properties deemed
17 necessary in connection with the project;

18 E. "mortgage" means a mortgage or a mortgage and
19 deed of trust or the pledge and hypothecation of any assets as
20 collateral security;

21 F. "health care services" means the diagnosis or
22 treatment of sick or injured persons or medical research and
23 includes the ownership, operation, maintenance, leasing and
24 disposition of health care facilities such as hospitals,
25 clinics, laboratories, x-ray centers and pharmacies and, for

1 any small municipality only, [~~includes~~] office facilities for
2 physicians; and

3 G. "refinance a hospital project" means the
4 issuance of bonds by a municipality and the use of all or
5 substantially all of the proceeds to liquidate any obligations
6 previously incurred to finance or aid in financing a project
7 of any nonprofit corporation engaged in health care services,
8 including nursing homes, which would constitute a project
9 under the Industrial Revenue Bond Act had it been originally
10 undertaken and financed by a municipality pursuant to the
11 Industrial Revenue Bond Act."

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

14 "4-59-2. DEFINITIONS.--As used in the County Industrial
15 Revenue Bond Act, unless the context clearly indicates
16 otherwise:

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

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

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

1 D. "mortgage" means a mortgage or a mortgage and
 2 deed of trust or the pledge and hypothecation of any assets as
 3 collateral security;

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

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

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

22 (a) water utilities; and

23 ~~[(b) electricity generation facilities~~
 24 ~~in any class B county with: 1) a population of more than~~
 25 ~~forty-seven thousand but less than sixty thousand according to~~

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1 ~~the 1990 federal decennial census and with a net taxable value~~
2 ~~for property taxation purposes for the 1999 property tax year~~
3 ~~of more than five hundred fifty million dollars~~
4 ~~(\$550,000,000); 2) a population of less than twenty thousand~~
5 ~~according to the 1990 federal decennial census and with a net~~
6 ~~taxable value for property taxation purposes for the 1999~~
7 ~~property tax year of more than two hundred ten million dollars~~
8 ~~(\$210,000,000) but less than four hundred million dollars~~
9 ~~(\$400,000,000); 3) a population of more than fifteen thousand~~
10 ~~but less than nineteen thousand according to the 1990 federal~~
11 ~~decennial census and with a net taxable value for property~~
12 ~~taxation purposes for the 1999 property tax year of more than~~
13 ~~one hundred eighty million dollars (\$180,000,000) but less~~
14 ~~than two hundred forty million dollars (\$240,000,000); 4) a~~
15 ~~population of more than forty-two thousand but less than~~
16 ~~forty-five thousand according to the 1990 federal decennial~~
17 ~~census and with a net taxable value for property taxation~~
18 ~~purposes for the 1999 property tax year of more than three~~
19 ~~hundred million dollars (\$300,000,000) but less than four~~
20 ~~hundred million dollars (\$400,000,000); 5) a population of~~
21 ~~less than six thousand according to the 1990 federal decennial~~
22 ~~census and with a net taxable value for property taxation~~
23 ~~purposes for the 1999 property tax year of more than one~~
24 ~~hundred million dollars (\$100,000,000); or 6) a population of~~
25 ~~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);]~~

(b) any electricity generation facility
that does not provide retail electric service to New Mexico
customers;

(3) any business in which all or part of the
activities of ~~[such]~~ the 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 3. Section 7-4-10 NMSA 1978 (being Laws 1993,

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1 Chapter 153, Section 1, as amended by Laws 2001, Chapter 57,
2 Section 1 and by Laws 2001, Chapter 284, Section 3 and also by
3 Laws 2001, Chapter 337, Section 1) is amended to read:

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

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

10 B. For taxable years beginning prior to January 1,
11 2011, each taxpayer whose principal business activity is
12 manufacturing may elect to have business income apportioned to
13 this state by multiplying the income by a fraction, the
14 numerator of which is the property factor plus the payroll
15 factor plus twice the sales factor and the denominator of
16 which is four. To elect the method of apportionment provided
17 by this subsection, the taxpayer shall notify the department
18 of the election, in writing, no later than the date on which
19 the taxpayer files the return for the first taxable year to
20 which the election will apply. The election will apply to
21 that taxable year and to each taxable year thereafter until
22 the taxpayer notifies the department, in writing, that the
23 election is terminated, except that the taxpayer shall not
24 terminate the election until the method of apportioning
25 business income provided by this subsection has been used by

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

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

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

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

22 (1) construction;
23 (2) farming;
24 (3) power generation other than electricity
25 generation at a facility that does not provide retail electric

1 service to New Mexico customers; or

2 (4) processing natural resources, including
3 hydrocarbons. "

4 Section 4. Section 7-9A-3 NMSA 1978 (being Laws 1979,
5 Chapter 347, Section 3, as amended) is amended to read:

6 "7-9A-3. DEFINITIONS. -- As used in the Investment Credit
7 Act:

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

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

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

- 1 (1) construction;
- 2 (2) farming;
- 3 (3) power generation other than [electricity
- 4 ~~generation at facilities in any class B county with:~~

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

10 (b) ~~a population of less than twenty~~
 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 two hundred ten~~
 14 ~~million dollars (\$210,000,000) but less than four hundred~~
 15 ~~million dollars (\$400,000,000);~~

16 (c) ~~a population of more than fifteen~~
 17 ~~thousand but less than nineteen thousand according to the 1990~~
 18 ~~federal decennial census and with a net taxable value for~~
 19 ~~property taxation purposes for the 1999 property tax year of~~
 20 ~~more than one hundred eighty million dollars (\$180,000,000)~~
 21 ~~but less than two hundred forty million dollars~~
 22 ~~(\$240,000,000);~~

23 (d) ~~a population of more than forty-two~~
 24 ~~thousand but less than forty-five thousand according to the~~
 25 ~~1990 federal decennial census and with a net taxable value for~~

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1 ~~property taxation purposes for the 1999 property tax year of~~
2 ~~more than three hundred million dollars (\$300,000,000) but~~
3 ~~less than four hundred million dollars (\$400,000,000);~~

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

9 ~~(f) a population of less than thirty-~~
10 ~~five thousand according to the 1990 federal decennial census~~
11 ~~and with a net taxable value for property taxation purposes~~
12 ~~for the 1999 property tax year of more than seven hundred~~
13 ~~million dollars (\$700,000,000)] electricity generation at a~~
14 ~~facility that does not provide retail electric service to New~~
15 ~~Mexico customers; or~~

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

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

23 E. "recyclable materials" means materials that
24 would otherwise become solid waste if not recycled and that
25 can be collected, separated or processed and placed in use in

1 the form of raw materials or products; and

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

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

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