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SENATE BILL 744

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

Stuart Ingle

AN ACT

RELATING TO PROPERTY TAXATION; AMENDING THE DEVELOPMENT
INCENTIVE ACT AUTHORIZING MUNICIPALITIES AND COUNTIES TO
PROVIDE A PROPERTY TAX EXEMPTION FOR COMMERCIAL PERSONAL
PROPERTY OF CERTAIN BUSINESS FACILITIES.

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

Section 1. Section 3-64-1 NMSA 1978 (being Laws 1991,
Chapter 163, Section 1) is amended to read:

"3-64-1. SHORT TITLE. -- [~~This act~~] Chapter 3, Article 64
NMSA 1978 may be cited as the "Community Development Incentive
Act". "

Section 2. Section 3-64-2 NMSA 1978 (being Laws 1991,
Chapter 163, Section 2) is amended to read:

"3-64-2. DEFINITIONS. --

A. As used in the Community Development Incentive

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1 Act:

2 (1) "commencement of commercial operations"
3 occurs when the new business facility is first available for
4 use by the taxpayer or first capable of being used by the
5 taxpayer in the revenue-producing enterprise in which the
6 taxpayer intends to use the new business facility;

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

14 (3) "new business facility" means a facility
15 that satisfies the following requirements:

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

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1 operation of a revenue-producing enterprise shall be considered
2 a "new business facility" if the requirements of Subparagraphs
3 (b), (c) and (d) of this paragraph are satisfied;

4 (b) the facility is acquired by or
5 leased to the taxpayer on or after July 1, 1991 [~~and within~~
6 ~~those property tax years ending on or before December 31,~~
7 ~~2001~~]; provided, the facility shall be deemed to have been
8 acquired by or leased to the taxpayer [~~within~~] on or after the
9 specified [~~dates~~] date if the transfer of title to the
10 taxpayer, the transfer of possession pursuant to a binding
11 contract to transfer title to the taxpayer or the commencement
12 of the term of the lease to the taxpayer occurs [~~within those~~
13 ~~dates~~] on or after that date or if the facility is constructed,
14 erected or installed by or on behalf of the taxpayer, the
15 construction, erection or installation is completed [~~within~~
16 ~~those dates~~] on or after that date;

17 (c) if the facility was acquired by the
18 taxpayer from another person and the facility was employed,
19 immediately prior to the transfer of title to the facility to
20 the taxpayer or to the commencement of the term of the lease of
21 the facility to the taxpayer, by any other person in the
22 operation of a revenue-producing enterprise, the taxpayer does
23 not continue the operation of the same or a substantially
24 identical revenue-producing enterprise at the facility; and

25 (d) the facility is not a replacement

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1 business facility;

2 (4) "new business facility employee" means a
3 person employed by the taxpayer in the operation of a new
4 business facility during the taxable year for which the
5 exemption authorized by Section [~~3 of the Development Incentive~~
6 ~~Act~~] 3-64-3 NMSA 1978 is granted; a person shall be considered
7 to have been so employed if the person performs duties in
8 connection with the operation of the new business facility on:

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

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

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

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

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1 year during which the new business facility was in operation by
2 the number of full calendar months during that period;

3 (5) "new business facility investment" means
4 the value of the real and tangible personal property, except
5 inventory or property held for sale to customers in the
6 ordinary course of the taxpayer's business, that constitutes
7 the new business facility or that is used by the taxpayer in
8 the operation of the new business facility during the property
9 tax year for which the exemption authorized by Section [~~3 of~~
10 ~~the Development Incentive Act~~] 3-64-3 NMSA 1978 is granted and
11 the value of that property during the year shall be:

12 (a) its original cost if owned by the
13 taxpayer; or

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

18 (6) "related taxpayer" means:

19 (a) a corporation, partnership, limited
20 liability company, trust or association controlled by the
21 taxpayer;

22 (b) an individual, corporation, limited
23 liability company, partnership, trust or association under the
24 control of the taxpayer; or

25 (c) a corporation, limited liability

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1 company, partnership, trust or association controlled by an
2 individual, corporation, limited liability company,
3 partnership, trust or association under the control of the
4 taxpayer.

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

17 (7) "replacement business facility" means a
18 facility as defined in Paragraph (3) of this subsection and
19 referred to in this paragraph as a "new facility" [~~which~~] that
20 replaces another facility, referred to in this paragraph as an
21 "old facility", located within the state in which the taxpayer
22 or a related taxpayer previously operated but discontinued
23 operating on or before the close of the first property tax year
24 in which the exemption authorized by Section [~~3 of the~~
25 ~~Development Incentive Act~~] 3-64-3 NMSA 1978 is claimed; a new

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1 facility shall be deemed to replace an old facility if the
2 following conditions are met:

3 (a) the old facility was operated by the
4 taxpayer or a related taxpayer for more than three full
5 property tax years out of the five property tax years next
6 preceding the property tax year in which commencement of
7 commercial operations occurs at the new facility; and

8 (b) the old facility was employed by the
9 taxpayer or a related taxpayer in the operation of a revenue-
10 producing enterprise and the taxpayer continues the operation
11 of the same or a substantially identical revenue-producing
12 enterprise at the new facility.

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

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

22 (a) the production, assembly,
23 fabrication, manufacture or processing of any agricultural,
24 mineral or manufactured product;

25 (b) the storage, warehousing,

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1 distribution or sale of any products of agriculture, mining or
2 manufacturing;

3 (c) the feeding of livestock at a
4 feedlot;

5 (d) the operation of laboratories or
6 other facilities for scientific, agricultural animal husbandry
7 or industrial research development;

8 (e) the generation of electricity;

9 [~~(e)~~] (f) the performance of services of
10 any type;

11 [~~(f)~~] (g) the administrative management
12 of any of the activities listed in Subparagraphs (a) through
13 [~~(e)~~] (f) of this paragraph; or

14 [~~(g)~~] (h) any combination of any of the
15 activities referred to in [~~Subparagraph (f)~~] Subparagraphs (a)
16 through (g) of this paragraph; and

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

25 B. The new business facility investment shall be

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1 determined by dividing by twelve the sum of the total value of
2 such property on the last business day of each calendar month
3 of the property tax year. If the new business facility is in
4 operation for less than an entire property tax year, the new
5 business facility investment shall be determined by dividing
6 the sum of the total value of the property on the last business
7 day of each full calendar month during the portion of the
8 property tax year during which the new business facility was in
9 operation by the number of full calendar months during that
10 period.

11 C. If a facility that does not constitute a new
12 business facility is expanded by the taxpayer, the expansion
13 shall be considered a separate facility eligible for the
14 exemption authorized by Section [~~3 of the Development Incentive~~
15 ~~Act~~] 3-64-3 NMSA 1978 if:

16 (1) the taxpayer's investment in the expansion
17 exceeds one million dollars (\$1,000,000) or, if less, one
18 hundred percent of its investment in the original facility
19 prior to expansion; and

20 (2) the expansion otherwise constitutes a new
21 business facility.

22 The taxpayer's investment in the expansion and in the
23 original facility prior to expansion shall be determined in the
24 manner provided in Paragraph (5) of Subsection A of this
25 section.

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1 D. If a facility that does not constitute a new
2 business facility is expanded by the taxpayer, the expansion
3 shall be considered a separate facility for purposes of the
4 exemption granted by Section [~~3 of the Development Incentive~~
5 ~~Act~~] 3-64-3 NMSA 1978 if:

6 (1) the expansion results in the employment of
7 ten or more new business facility employees over and above the
8 average number of employees employed in the county or
9 municipality granting the exemption by the taxpayer during the
10 twelve months immediately prior to the expansion, computed
11 pursuant to Paragraph (4) of Subsection A of this section; and

12 (2) the expansion otherwise constitutes a new
13 business facility."

14 Section 3. Section 3-64-3 NMSA 1978 (being Laws 1991,
15 Chapter 163, Section 3) is amended to read:

16 "3-64-3. EXEMPTION OF CERTAIN COMMERCIAL PERSONAL
17 PROPERTY FROM PROPERTY TAX BY LOCAL BODIES. --

18 A. The governing body of a county or a municipality
19 [~~other than a class A county or a municipality in such county~~]
20 may by a majority vote of the members elected to the governing
21 body adopt a resolution exempting commercial personal property
22 of a new business facility located in the county or
23 municipality from the imposition of any property tax on
24 commercial personal property authorized to be imposed by the
25 respective governing body, subject to the limitations of

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1 Subsection B of this section.

2 B. The exemption authorized by Subsection A of this
3 section shall be for [~~fifty~~] one hundred percent of the value
4 for property taxation purposes of the property exempted.

5 C. The exemption authorized by Subsection A of this
6 section may be for any period of time not to exceed [~~five~~]
7 twenty years. The effective date of any exemption shall be
8 January 1 of the property tax year in which the new business
9 facility commences commercial operations. "

10 Section 4. Section 3-64-5 NMSA 1978 (being Laws 1991,
11 Chapter 163, Section 5) is amended to read:

12 "3-64-5. EXPIRATION OF EXEMPTION--ACTION OF ASSESSOR.--An
13 exemption granted under Section [~~3 of the Development Incentive~~
14 ~~Act~~] 3-64-3 NMSA 1978 shall automatically terminate on the last
15 day of the property tax year in which it expires pursuant to
16 the exemption resolution or on the last day of the property tax
17 year in which a new business facility ceases commercial
18 operations, whichever occurs first. "