SENATE BILL

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

INTRODUCED BY

DISCUSSION DRAFT

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

underscored material = new
[~~bracketed material~~] = delete

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

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

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

(a) the facility is employed by the taxpayer in the operation of a revenue-producing enterprise; the facility shall not be considered a "new business facility" in the hands of the taxpayer if the taxpayer's only activity with respect to the facility is to lease it to another person <u>unless the lease is for assets that comprise a commercial enterprise that produces electricity from a solar panel installation</u>; if the taxpayer employs only a portion of the facility in the operation of a revenue-producing enterprise and leases another portion of the facility to another person or does not otherwise use such other portions in the operation of a revenue-producing enterprise, the portion employed by the taxpayer in the operation of a revenue-producing enterprise

underscored material = new
[~~bracketed material~~] = delete

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

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

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

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

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

underscored material = new
[~~bracketed material~~] = delete

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

(a) a regular, full-time basis;

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

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

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

(5) "new business facility investment" means

underscored material = new
[~~bracketed material~~] = delete

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

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

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

(6) "related taxpayer" means:

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

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

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

underscored material = new
[~~bracketed material~~] = delete

taxpayer.

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

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

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

underscored material = new
[~~bracketed material~~] = delete

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

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

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

(8) "revenue-producing enterprise" means:

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

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

(c) the feeding of livestock at a feedlot;

underscored material = new
[~~bracketed material~~] = delete

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

(e) the generation of electricity;

(f) the performance of services of any type;

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

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

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

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

underscored material = new
[~~bracketed material~~] = delete

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

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

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

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

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

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

(1) the expansion results in the employment of

underscored material = new
[~~bracketed material~~] = delete

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

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

underscored material = new
[~~bracketed material~~] = delete