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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.

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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.--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 Act:

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

1 respect to the facility is to lease it to another person; if the taxpayer employs only a
2 portion of the facility in the operation of a revenue-producing enterprise and leases
3 another portion of the facility to another person or does not otherwise use such other
4 portions in the operation of a revenue-producing enterprise, the portion employed by
5 the taxpayer in the operation of a revenue-producing enterprise shall be considered a
6 "new business facility" if the requirements of Subparagraphs (b), (c) and (d) of this
7 paragraph are satisfied;

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

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

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

20 (4) "new business facility employee" means a person employed
21 by the taxpayer in the operation of a new business facility during the taxable year for
22 which the exemption authorized by Section 3-64-3 NMSA 1978 is granted; a person
23 shall be considered to have been so employed if the person performs duties in
24 connection with the operation of the new business facility on:

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

25 (b) a part-time basis if the person is customarily

1 performing the described duties at least twenty hours per week throughout the taxable
2 year; or

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

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

14 (5) "new business facility investment" means the value of the
15 real and tangible personal property, except inventory or property held for sale to
16 customers in the ordinary course of the taxpayer's business, that constitutes the new
17 business facility or that is used by the taxpayer in the operation of the new business
18 facility during the property tax year for which the exemption authorized by Section 3-
19 64-3 NMSA 1978 is granted and the value of that property during the year shall be:

20 (a) its original cost if owned by the taxpayer; or
21 (b) eight times the net annual rental rate if leased by
22 the taxpayer; the "net annual rental rate" is the annual rental rate paid by the
23 taxpayer, less any annual rental rate received by the taxpayer from subrentals;

24 (6) "related taxpayer" means:

25 (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,

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

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

10 (7) "replacement business facility" means a facility as defined
11 in Paragraph (3) of this subsection and referred to in this paragraph as a "new facility"
12 that replaces another facility, referred to in this paragraph as an "old facility", located
13 within the state in which the taxpayer or a related taxpayer previously operated but
14 discontinued operating on or before the close of the first property tax year in which the
15 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:

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

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

23 Notwithstanding the provisions of Subparagraph (a) of this paragraph, a facility
24 shall not be considered a "replacement business facility" if the taxpayer's investment in
25 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

1 investment in the new facility and in the old facility shall be determined in the manner
2 provided in Paragraph (5) of this subsection;

- 3 (8) "revenue-producing enterprise" means:
- 4 (a) the production, assembly, fabrication, manufacture
5 or processing of any agricultural, mineral or manufactured product;
 - 6 (b) the storage, warehousing, distribution or sale of any
7 products of agriculture, mining or manufacturing;
 - 8 (c) the feeding of livestock at a feedlot;
 - 9 (d) the operation of laboratories or other facilities for
10 scientific, agricultural animal husbandry or industrial research development;
 - 11 (e) the generation of electricity;
 - 12 (f) the performance of services of any type;
 - 13 (g) the administrative management of any of the
14 activities listed in Subparagraphs (a) through (f) of this paragraph; or
 - 15 (h) any combination of any of the activities referred to
16 in Subparagraphs (a) through (g) of this paragraph; and

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

23 B. The new business facility investment shall be determined by dividing
24 by twelve the sum of the total value of such property on the last business day of each
25 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 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

1 during that period.

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

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

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

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

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

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

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

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

24 "3-64-3. EXEMPTION OF CERTAIN COMMERCIAL PERSONAL PROPERTY
25 FROM PROPERTY TAX BY LOCAL BODIES.--

26 A. The governing body of a county or a municipality may by a majority
27 vote of the members elected to the governing body adopt a resolution exempting
28 commercial personal property of a new business facility located in the county or
29 municipality from the imposition of any property tax on commercial personal property

1 authorized to be imposed by the respective governing body, subject to the limitations
2 of Subsection B of this section.

3 B. The exemption authorized by Subsection A of this section may be
4 for up to one hundred percent of the value for property taxation purposes of the
5 property exempted.

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

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

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