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HOUSE BILL 165

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

INTRODUCED BY

David L. Doyle

AN ACT

RELATING TO TAXATION; DEFINING "COMMERCIAL PERSONAL PROPERTY"  
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  
use by the taxpayer or first capable of being used by the  
taxpayer in the revenue-producing enterprise in which the

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1 taxpayer intends to use the new business facility;

2 (2) "commercial personal property" means  
3 tangible personal property classified for depreciation purposes  
4 as three-year property, five-year property, seven-year  
5 property, ten-year property or fifteen-year property pursuant  
6 to Section 168 of the federal Internal Revenue Code of 1986, as  
7 that section may be amended or renumbered;

8 [~~2~~] (3) "facility" means any factory, mill,  
9 plant, refinery, warehouse, dairy, feedlot, building or complex  
10 of buildings located within the state, including the land on  
11 which the facility is located and all machinery, equipment and  
12 other real and tangible personal property located at or within  
13 the facility and used in connection with the operation of the  
14 facility;

15 [~~3~~] (4) "new business facility" means a  
16 facility that satisfies the following requirements:

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

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

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

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

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

25 [~~(4)~~] (5) "new business facility employee"

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

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

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

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

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

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1                    [~~(5)~~] (6) "new business facility investment"  
2 means the value of the real and tangible personal property,  
3 except inventory or property held for sale to customers in the  
4 ordinary course of the taxpayer's business, that constitutes  
5 the new business facility or that is used by the taxpayer in  
6 the operation of the new business facility during the property  
7 tax year for which the exemption authorized by Section 3-64-3  
8 NMSA 1978 is granted and the value of that property during the  
9 year shall be:

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

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

16                    [~~(6)~~] (7) "related taxpayer" means:

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

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

23                                    (c) a corporation, limited liability  
24 company, partnership, trust or association controlled by an  
25 individual, corporation, limited liability company,

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1 partnership, trust or association under the control of the  
2 taxpayer.

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

15 [~~(7)~~] (8) "replacement business facility"  
16 means a facility as defined in Paragraph [~~(3)~~] (4) of this  
17 subsection and referred to in this paragraph as a "new  
18 facility" that replaces another facility, referred to in this  
19 paragraph as an "old facility", located within the state in  
20 which the taxpayer or a related taxpayer previously operated  
21 but discontinued operating on or before the close of the first  
22 property tax year in which the exemption authorized by Section  
23 3-64-3 NMSA 1978 is claimed; a new facility shall be deemed to  
24 replace an old facility if the following conditions are met:

25 (a) the old facility was operated by the

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1 taxpayer or a related taxpayer for more than three full  
2 property tax years out of the five property tax years next  
3 preceding the property tax year in which commencement of  
4 commercial operations occurs at the new facility; and

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

10 Notwithstanding the provisions of Subparagraph (a) of this  
11 paragraph, a facility shall not be considered a "replacement  
12 business facility" if the taxpayer's investment in the new  
13 facility exceeds three million dollars (\$3,000,000) or, if  
14 less, three hundred percent of the investment in the old  
15 facility by the taxpayer or related taxpayer. The investment  
16 in the new facility and in the old facility shall be determined  
17 in the manner provided in Paragraph [~~(5)~~] (6) of this  
18 subsection;

19 [~~(8)~~] (9) "revenue-producing enterprise"  
20 means:

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

24 (b) the storage, warehousing,  
25 distribution or sale of any products of agriculture, mining or

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1 manufacturing;

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

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

7 (e) the generation of electricity;

8 (f) the performance of services of any  
9 type;

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

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

16 [~~(9)~~] (10) "same or a substantially identical  
17 revenue-producing enterprise" means a revenue-producing  
18 enterprise in which the products produced or sold, the services  
19 performed or the activities conducted are the same in character  
20 and use and are produced, sold, performed or conducted in the  
21 same manner and to or for the same types of customers as the  
22 products, services or activities produced, sold, performed or  
23 conducted in another revenue-producing enterprise.

24 B. The new business facility investment shall be  
25 determined by dividing by twelve the sum of the total value of

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

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

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

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

20 The taxpayer's investment in the expansion and in the  
21 original facility prior to expansion shall be determined in the  
22 manner provided in Paragraph [~~5~~] (6) of Subsection A of this  
23 section.

24 D. If a facility that does not constitute a new  
25 business facility is expanded by the taxpayer, the expansion

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1 shall be considered a separate facility for purposes of the  
2 exemption granted by Section 3-64-3 NMSA 1978 if:

3 (1) the expansion results in the employment of  
4 ten or more new business facility employees over and above the  
5 average number of employees employed in the county or  
6 municipality granting the exemption by the taxpayer during the  
7 twelve months immediately prior to the expansion, computed  
8 pursuant to Paragraph [~~4~~] (5) of Subsection A of this  
9 section; and

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

12 SECTION 2. EFFECTIVE DATE.--The effective date of the  
13 provisions of this act is July 1, 2012.

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