

**HOUSE BILL NO. 1402**

Introduced by

Representatives Brandenburg, D. Johnson, Nelson, Nicholas

Senators Kroepelin, Wanzek

1 A BILL for an Act to create and enact chapter 57-38.6 of the North Dakota Century Code,  
2 relating to an agricultural processing business investment income tax credit; and to provide an  
3 effective date.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1.** Chapter 57-38.6 of the North Dakota Century Code is created and  
6 enacted as follows:

7 **57-38.6-01. Definitions.** As used in this chapter, unless the context otherwise  
8 requires:

- 9 1. "Agricultural commodity processing facility" means a facility that through  
10 processing involving the employment of knowledge and labor adds value to an  
11 agricultural commodity capable of being raised in this state.
- 12 2. "Director" means the director of the department of economic development and  
13 finance.
- 14 3. "Qualified business" means a business that:
  - 15 a. Is a cooperative or limited liability company incorporated or organized in North  
16 Dakota for the primary purpose of value-added processing and marketing of  
17 agricultural commodities capable of being raised in this state;
  - 18 b. Is in compliance with the requirements for filings with the securities  
19 commissioner under the securities laws of this state;
  - 20 c. Has an agricultural commodity processing facility in this state; and
  - 21 d. Has a majority of its ownership interests owned by producers of unprocessed  
22 agricultural commodities.
- 23 4. "Taxpayer" means an individual, estate, or trust.

1           **57-38.6-02. Certification - Investment reporting by qualified businesses.** The  
2 director shall certify whether a business that has requested to become a qualified business  
3 meets the requirements of subsection 3 of section 57-38.6-01. The director shall establish the  
4 necessary forms and procedures for certifying qualified businesses.

5           **57-38.6-03. Agricultural business investment tax credit.** If a taxpayer makes a  
6 qualified investment in a qualified business, the taxpayer is entitled to a credit against state  
7 income tax liability as determined under section 57-38-29. The amount of the credit to which a  
8 taxpayer is entitled is thirty percent of the amount invested by the taxpayer in qualified  
9 businesses during the taxable year, subject to the following:

- 10           1. The aggregate annual investment for which a taxpayer may obtain a tax credit  
11           under this section is not less than five thousand dollars and not more than fifty  
12           thousand dollars. This subsection may not be interpreted to limit additional  
13           investment by a taxpayer for which that taxpayer is not applying for a credit.
- 14           2. In any taxable year, a taxpayer may claim no more than fifty percent of the credit  
15           under this section which is attributable to qualified investments in a single taxable  
16           year. The amount of the credit allowed under this section for any taxable year may  
17           not exceed fifty percent of the taxpayer's tax liability as otherwise determined  
18           under chapter 57-38.
- 19           3. Any amount of credit under this section not allowed because of the limitations in  
20           this section may be carried forward for up to fifteen taxable years after the taxable  
21           year in which the investment was made.
- 22           4. A partnership that invests in a qualified business must be considered to be the  
23           taxpayer for purposes of the investment limitations in this section and the amount  
24           of the credit allowed with respect to a partnership's investment in a qualified  
25           business must be determined at the partnership level. The amount of the total  
26           credit determined at the partnership level must be allowed to the partners, limited  
27           to individuals, estates, and trusts, in proportion to their respective interests in the  
28           partnership.
- 29           5. The investment must be at risk in the business. A qualified investment must be in  
30           the form of a purchase of stock, membership interests, or the right to receive

1 payment of dividends from the business. An investment for which a credit is  
2 received under this section must remain in the business for at least three years.

3 6. The entire amount of an investment for which a credit is claimed under this section  
4 must be expended by the qualified business for plant, equipment, research and  
5 development, marketing and sales activity, or working capital for the qualified  
6 business.

7 7. The tax commissioner may disallow any credit otherwise allowed under this section  
8 if any representation by a business in the application for certification as a qualified  
9 business proves to be false or if the taxpayer or qualified business fails to satisfy  
10 any conditions under this section or any conditions consistent with this section  
11 otherwise determined by the tax commissioner. The amount of any credit  
12 disallowed by the tax commissioner that reduced the taxpayer's income tax liability  
13 for any or all applicable tax years, plus penalty and interest provided under section  
14 57-38-45, must be paid by the taxpayer.

15 **57-38.6-04. Taxable year for agricultural business investment tax credit.** The tax  
16 credit under section 57-38.6-03 accrues to the taxpayer for the taxable year in which full  
17 consideration for the investment in the qualified business was received by the qualified  
18 business.

19 **57-38.6-05. Agricultural business investment tax credit - Procedure - Rules.** To  
20 receive the tax credit provided by section 57-38.6-03, a taxpayer must claim the credit on the  
21 taxpayer's annual state income tax return in the manner prescribed by the tax commissioner  
22 and file with the return a copy of the form issued by the qualified business as to the taxpayer's  
23 investment in the qualified business under section 57-38.6-06.

24 **57-38.6-06. Investment reporting forms.** Within thirty days after the date on which an  
25 investment in a qualified business is purchased, the qualified business shall file with the tax  
26 commissioner and the director and provide to the investor completed forms prescribed by the  
27 tax commissioner which show as to each investment in the qualified business the following:

- 28 1. The name, address, and social security number of the taxpayer who made the  
29 investment.  
30 2. The dollar amount paid for the investment by the taxpayer.

1           3.    The date on which full consideration was received by the qualified business for the  
2                   investment.

3           **57-38.6-07. Rules and administration.** The tax commissioner shall administer this  
4 chapter as it relates to an income tax credit and has the same powers as provided under  
5 section 57-38-56 for purposes of this chapter. The director shall administer this chapter as it  
6 relates to certification of qualified businesses and the director may adopt rules for that purpose.

7           **SECTION 2. EFFECTIVE DATE.** This Act is effective for taxable years beginning after  
8 December 31, 1998, and for investments in qualified businesses made after December 31,  
9 1998.