

**FIRST ENGROSSMENT
with Conference Committee Amendments
ENGROSSED HOUSE BILL NO. 1413**

Introduced by

Representatives Berg, B. Thoreson, Wald, Weiler

Senators Grindberg, Wardner

1 A BILL for an Act to create and enact a new subsection to section 57-38-30.3 of the North
2 Dakota Century Code, relating to credits allowed on the short-form income tax return; to amend
3 and reenact subsection 4 of section 57-38.5-01 and sections 57-38.5-02, 57-38.5-03, and
4 57-38.5-05 of the North Dakota Century Code, relating to the seed capital investment tax credit;
5 to provide for a report on seed capital investment tax credits; and to provide an effective date.

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

7 **SECTION 1.** A new subsection to section 57-38-30.3 of the North Dakota Century
8 Code is created and enacted as follows:

9 A taxpayer filing a return under this section is entitled to the credit provided under
10 section 57-38.5-03.

11 **SECTION 2. AMENDMENT.** Subsection 4 of section 57-38.5-01 of the North Dakota
12 Century Code is amended and reenacted as follows:

13 4. "Qualified business" means a

14 a. A primary sector business that:

15 a. (1) Is incorporated or its satellite operation is incorporated as a for-profit
16 corporation or is a partnership, limited partnership, limited liability
17 company, limited liability partnership, or joint venture;

18 b. (2) Is in compliance with the requirements for filings with the securities
19 commissioner under the securities laws of this state;

20 c. (3) Has North Dakota residents as a majority of its employees in the North
21 Dakota principal office or the North Dakota satellite operation; and

22 d. (4) Has its principal office in this state and has the majority of its business
23 activity performed in this state, except sales activity, or has a significant
24 operation in North Dakota that has or is projected to have more than

1 ~~twenty five ten~~ employees or ~~two one~~ hundred fifty thousand dollars of
2 sales annually; and

3 e. ~~Has a majority of its ownership interests owned by one or more individuals for~~
4 ~~whom operation of the business is their full-time professional activity or~~

5 b. An organization that:

6 (1) Is in compliance with the requirements for filings with the securities
7 commissioner under the securities laws of this state; and

8 (2) Attracts investments to build and own a value-added agricultural
9 processing facility that it leases with an option to purchase to a primary
10 sector business that qualifies under subdivision a.

11 **SECTION 3. AMENDMENT.** Section 57-38.5-02 of the North Dakota Century Code is
12 amended and reenacted as follows:

13 **57-38.5-02. Certification - Investment reporting by qualified businesses.** The
14 director shall certify whether a business that has requested to become a qualified business
15 meets the requirements of subsection 4 of section 57-38.5-01 and the certification must include
16 the period of time the certification covers. The director shall establish the necessary forms and
17 procedures for certifying qualified businesses.

18 **SECTION 4. AMENDMENT.** Section 57-38.5-03 of the North Dakota Century Code is
19 amended and reenacted as follows:

20 **57-38.5-03. Seed capital investment tax credit.** If a taxpayer makes a qualified
21 investment in a qualified business, the taxpayer is entitled to a credit against state income tax
22 liability under section 57-38-29 or 57-38-30.3. The amount of the credit to which a taxpayer is
23 entitled is thirty percent of the amount invested by the taxpayer in qualified businesses during
24 the taxable year, subject to the following:

25 1. The aggregate annual investment for which a taxpayer may obtain a tax credit
26 under this section is not less than five thousand dollars and not more than fifty
27 thousand dollars. This subsection may not be interpreted to limit additional
28 investment by a taxpayer for which that taxpayer is not applying for a credit.

29 2. In any taxable year, a taxpayer may claim no more than fifty percent of the credit
30 under this section which is attributable to investments in a single taxable year. ~~The~~
31 ~~amount of the credit allowed under this section for any taxable year may not~~

- 1 ~~exceed fifty percent of the taxpayer's tax liability as otherwise determined under~~
2 ~~this chapter.~~
- 3 3. Any amount of credit under this section not allowed because of the limitations in
4 this section may be carried forward for up to ~~fifteen~~ four taxable years after the
5 taxable year in which the investment was made.
- 6 4. A partnership that invests in a qualified business must be considered to be the
7 taxpayer for purposes of the investment limitations in this section and the amount
8 of the credit allowed with respect to a partnership's investment in a qualified
9 business must be determined at the partnership level. The amount of the total
10 credit determined at the partnership level must be allowed to the partners, limited
11 to individuals, estates, and trusts, in proportion to their respective interests in the
12 partnership.
- 13 5. The investment must be at risk in the business. An investment for which a credit is
14 received under this section must remain in the business for at least three years.
- 15 6. Tax credits for investments in one qualified business may not exceed ~~the least of~~
16 ~~the following amounts:~~
- 17 a. ~~Thirty percent of the total amount of investments in the qualified business~~
18 ~~during the taxable year.~~
- 19 b. ~~Gross receipts from out-of-state sales of the business during the taxable year.~~
- 20 e. ~~Two~~ two hundred fifty thousand dollars.
- 21 7. The entire amount of an investment for which a credit is claimed under this section
22 must be expended by the qualified business for plant, equipment, research and
23 development, marketing and sales activity, or working capital for the qualified
24 business.
- 25 8. A taxpayer who owns a controlling interest in the qualified business or whose
26 full-time professional activity is the operation of the business is not entitled to a
27 credit under this section. A member of the immediate family of a taxpayer
28 disqualified by this subsection is not entitled to the credit under this section. For
29 purposes of this subsection, "immediate family" means the taxpayer's spouse,
30 parent, sibling, or child or the spouse of any such person.

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

9 **SECTION 5. AMENDMENT.** Section 57-38.5-05 of the North Dakota Century Code is
10 amended and reenacted as follows:

11 **57-38.5-05. Seed capital investment tax credit limits.** The aggregate amount of
12 seed capital investment tax credit allowed for investments under this chapter ~~in any taxable~~
13 through calendar year 2002 is limited to one million dollars and after calendar year 2002 is
14 limited to two million five hundred fifty thousand dollars. If investments in qualified businesses
15 reported to the commissioner under section 57-38.5-07 exceed the limits on tax credits for
16 investments imposed by this section, the credit must be allowed to taxpayers in the
17 chronological order of their investments in qualified businesses as determined from the forms
18 filed under section 57-38.5-07.

19 **SECTION 6. SEED CAPITAL INVESTMENT TAX CREDIT REPORT.** The department
20 or division of economic development and finance shall report on usage of the credit under
21 chapter 57-38.5, to the finance and taxation committees of the house of representatives and
22 the senate of the fifty-eighth legislative assembly. The report must be filed at a public hearing
23 of each committee between the first and tenth legislative day of the fifty-eighth legislative
24 assembly and must include information identifying each business that has been certified as a
25 qualifying business under chapter 57-38.5. The aggregate amount of investments in each
26 qualified business as shown by investment reporting forms filed with the director, and any
27 available indicia of success of each qualified business including growth in employment and
28 sales or revenues.

29 **SECTION 7. EFFECTIVE DATE.** This Act is effective for taxable years beginning after
30 December 31, 2001.