

**SENATE BILL NO. 2386**

Introduced by

Senators Kroeplin, Erbele

Representatives Brandenburg, Kerzman

1 A BILL for an Act to create and enact a new subsection to section 57-38-30.3 and chapter  
2 57-38.6 of the North Dakota Century Code, relating to an agricultural cooperative investment  
3 income tax credit; and to provide an effective date.

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

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

7 An individual, estate, or trust is entitled to a credit against the tax determined under  
8 this section as calculated under section 57-38.6-03.

9 **SECTION 2.** Chapter 57-38.6 of the North Dakota Century Code is created and  
10 enacted as follows:

11 **57-38.6-01. Definitions.** As used in this chapter, unless the context otherwise  
12 requires:

- 13 1. "Agricultural commodity processing facility" means a facility that through  
14 processing involving the employment of knowledge and labor adds value to an  
15 agricultural commodity capable of being raised in this state.
- 16 2. "Director" means the director of the department of economic development and  
17 finance.
- 18 3. "Qualified cooperative" means a cooperative that:
  - 19 a. Is incorporated in this state after December 31, 2000, for the primary purpose  
20 of processing and marketing agricultural commodities capable of being raised  
21 in this state;
  - 22 b. Is in compliance with the requirements for filings with the securities  
23 commissioner under the securities laws of this state;
  - 24 c. Has an agricultural commodity processing facility in this state; and

1           d. Has a majority of its ownership interests owned by producers of unprocessed  
2           agricultural commodities.

3           4. "Taxpayer" means an individual, estate, or trust.

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

8           **57-38.6-03. Agricultural cooperative investment tax credit.** If a taxpayer makes a  
9           qualified investment in a qualified cooperative, the taxpayer is entitled to a credit against state  
10          income tax liability as determined under section 57-38-29 or 57-38-30.3. The amount of the  
11          credit to which a taxpayer is entitled is thirty percent of the amount invested by the taxpayer in  
12          qualified cooperatives during the taxable year, subject to the following:

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

- 1           5.    The investment must be at risk in the cooperative. A qualified investment must be  
2                    in the form of a purchase of stock or the right to receive payment of dividends from  
3                    the cooperative. An investment for which a credit is received under this section  
4                    must remain in the cooperative for at least three years.
- 5           6.    The entire amount of an investment for which a credit is claimed under this section  
6                    must be expended by the qualified cooperative for plant, equipment, research and  
7                    development, marketing and sales activity, or working capital for the qualified  
8                    cooperative.
- 9           7.    The tax commissioner may disallow any credit otherwise allowed under this section  
10                   if any representation by a cooperative in the application for certification as a  
11                   qualified cooperative proves to be false or if the taxpayer or qualified cooperative  
12                   fails to satisfy any conditions under this section or any conditions consistent with  
13                   this section otherwise determined by the tax commissioner. The amount of any  
14                   credit disallowed by the tax commissioner that reduced the taxpayer's income tax  
15                   liability for any or all applicable tax years, plus penalty and interest provided under  
16                   section 57-38-45, must be paid by the taxpayer.

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

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

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

- 1           1.    The name, address, and social security number of the taxpayer who made the
- 2                    investment.
- 3           2.    The dollar amount paid for the investment by the taxpayer.
- 4           3.    The date on which full consideration was received by the qualified cooperative for
- 5                    the investment.

6           **57-38.6-07. Rules and administration.** The tax commissioner is charged with

7 administration of this chapter as it relates to an income tax credit and has the same powers for

8 purposes of this chapter as provided under section 57-38-56. The director is charged with

9 administration of this chapter as it relates to certification of qualified cooperatives and the

10 director may adopt rules for that purpose.

11           **SECTION 3. EFFECTIVE DATE.** This Act is effective for taxable years beginning after

12 December 31, 2000, and for investments in qualified cooperatives made after December 31,

13 2000.