

Fifty-seventh
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2386

Introduced by

Senators Kroepflin, 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 ethanol production agricultural
3 cooperative or limited liability company investment income tax credit; and to provide an
4 effective date.

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

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

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

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

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

- 14 1. "Agricultural commodity processing facility" means a facility that produces ethanol
15 through processing involving the employment of knowledge and labor to add value
16 to an agricultural commodity capable of being raised in this state.
- 17 2. "Director" means the director of the department of economic development and
18 finance.
- 19 3. "Qualified business" means a cooperative or limited liability company that:
 - 20 a. Is incorporated or organized in this state after December 31, 2000, for the
21 primary purpose of establishing and operating an ethanol production facility in
22 this state;
 - 23 b. Is in compliance with the requirements for filings with the securities
24 commissioner under the securities laws of this state;

- 1 c. Has an agricultural commodity processing facility in this state; and
2 d. Has a majority of its ownership interests owned by producers of unprocessed
3 agricultural commodities.

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

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

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

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

1 to individuals, estates, and trusts, in proportion to their respective interests in the
2 partnership.

3 5. The investment must be at risk in the business. A qualified investment must be in
4 the form of a purchase of ownership interests or the right to receive payment of
5 dividends from the business. An investment for which a credit is received under
6 this section must remain in the business for at least three years.

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

11 7. The tax commissioner may disallow any credit otherwise allowed under this
12 section if any representation by a business in the application for certification as a
13 qualified business proves to be false or if the taxpayer or qualified business fails to
14 satisfy any conditions under this section or any conditions consistent with this
15 section otherwise determined by the tax commissioner. The amount of any credit
16 disallowed by the tax commissioner that reduced the taxpayer's income tax liability
17 for any or all applicable tax years, plus penalty and interest provided under section
18 57-38-45, must be paid by the taxpayer.

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

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

28 **57-38.6-06. Investment reporting forms.** Within thirty days after the date on which an
29 investment in a qualified business is purchased, the qualified business shall file with the tax
30 commissioner and the director and provide to the investor completed forms prescribed by the
31 tax commissioner which show as to each investment in the qualified business the 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 business for the
- 5 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 businesses and the director
10 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 businesses made after December 31,
13 2000.