

Fifty-ninth
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2281

Introduced by

Senators Klein, Grindberg, Taylor

Representatives Belter, Mueller, Pollert

1 A BILL for an Act to amend and reenact sections 57-38.6-01, 57-38.6-02, 57-38.6-03, and
2 57-38.6-04 of the North Dakota Century Code, relating to agricultural business investment
3 income tax credits; and to provide an effective date.

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

5 **SECTION 1. AMENDMENT.** Section 57-38.6-01 of the North Dakota Century Code is
6 amended and reenacted 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 commerce division of economic
13 development and finance.
- 14 3. "Qualified business" means a cooperative, corporation, partnership, or limited
15 liability company that:
 - 16 a. Is incorporated or organized in this state after December 31, 2000, for the
17 primary purpose of processing and marketing agricultural commodities
18 capable of being raised in this state;
 - 19 b. ~~Is~~ Has been certified by the securities commissioner to be in compliance with
20 ~~the requirements for filings with the securities commissioner~~ under the
21 securities laws of this state;
 - 22 c. Has an agricultural commodity processing facility, or intends to locate one, in
23 this state; and

1 d. ~~Has a majority of its ownership interests owned by producers of unprocessed~~
2 ~~agricultural commodities~~ Is among the first ten businesses that meets the
3 requirements of this subsection, but not a business that was previously
4 certified as a qualified business under chapter 57-38.5.

5 4. "Taxpayer" means an individual, estate, ~~or trust,~~ corporation, partnership, or
6 limited liability company.

7 **SECTION 2. AMENDMENT.** Section 57-38.6-02 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **57-38.6-02. Certification - Investment reporting by qualified businesses.** The
10 director shall certify whether a business that has requested to become a qualified business
11 meets the requirements of subsection 3 of section 57-38.6-01. The director shall establish the
12 necessary forms and procedures for certifying qualified businesses. The director is not
13 required to recertify a business as a qualified business under this chapter if the business was
14 previously certified by the director as a qualified business under chapter 57-38.5.

15 **SECTION 3. AMENDMENT.** Section 57-38.6-03 of the North Dakota Century Code is
16 amended and reenacted as follows:

17 **57-38.6-03. Agricultural business investment tax credit.** If a taxpayer makes a
18 qualified investment in a qualified business, the taxpayer is entitled to a credit against state
19 income tax liability as determined under section 57-38-29, 57-38-30, or 57-38-30.3. The
20 amount of the credit to which a taxpayer is entitled is thirty percent of the amount invested by
21 the taxpayer in qualified businesses during the taxable year, subject to the following:

- 22 1. ~~The aggregate maximum annual investment for which credit~~ a taxpayer may
23 obtain ~~a tax credit~~ under this section is ~~not more than twenty~~ fifty thousand dollars
24 and no taxpayer may obtain more than two hundred fifty thousand dollars in credits
25 under this section over any combination of taxable years. This subsection may not
26 be interpreted to limit additional investment by a taxpayer for which that taxpayer is
27 not applying for a credit.
- 28 2. In any taxable year, a taxpayer may claim no more than fifty percent of the credit
29 under this section which is attributable to qualified investments in a single taxable
30 year. The amount of the credit allowed under this section for any taxable year may

- 1 not exceed fifty percent of the taxpayer's tax liability as otherwise determined
2 under chapter 57-38.
- 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~~ five taxable years after the
5 taxable year in which the investment was made.
- 6 4. A partnership, subchapter S corporation, limited liability company that for tax
7 purposes is treated like a partnership, or any other passthrough entity that invests
8 in a qualified business must be considered to be the taxpayer for purposes of the
9 investment limitations in this section and, except for the tax liability limitation under
10 subsection 2 of this section, the amount of the credit allowed with respect to a
11 ~~partnership's~~ the passthrough entity's investment in a qualified business must be
12 determined at the ~~partnership~~ passthrough entity level. The amount of the total
13 credit determined at the ~~partnership~~ passthrough entity level must be allowed to
14 the ~~partners, limited to individuals, estates, and trusts~~ passthrough entity's owners,
15 in proportion to their respective ownership interests in the ~~partnership~~ passthrough
16 entity.
- 17 5. The investment must be at risk in the business. A qualified investment must be in
18 the form of a purchase of ownership interests or the right to receive payment of
19 dividends from the business. An investment for which a credit is received under
20 this section must remain in the business for at least three years. An investment
21 placed in escrow does not qualify for the credit.
- 22 6. The entire amount of an investment for which a credit is claimed under this section
23 must be expended by the qualified business for plant, equipment, research and
24 development, marketing and sales activity, or working capital for the qualified
25 business.
- 26 7. The tax commissioner may disallow any credit otherwise allowed under this
27 section if any representation by a business in the application for certification as a
28 qualified business proves to be false or if the taxpayer or qualified business fails to
29 satisfy any conditions under this section or any conditions consistent with this
30 section otherwise determined by the tax commissioner. The amount of any credit
31 disallowed by the tax commissioner that reduced the taxpayer's income tax liability

1 for any or all applicable tax years, plus penalty and interest provided under section
2 57-38-45, must be paid by the taxpayer.

3 8. An investment in an ethanol production facility made before January 1, 2005, that
4 did not qualify for the tax credit because of the two million five hundred thousand
5 dollar credit limitation in section 57-38.5-02, is entitled to a credit against state
6 income tax liability under section 57-38-29 or 57-38-30.3 in the amount of thirty
7 percent of the amount invested by the taxpayer in a qualified business subject to
8 the following:

9 a. The aggregate investment for which a taxpayer may obtain a credit under this
10 subsection is not less than five thousand dollars and not more than two
11 hundred fifty thousand dollars.

12 b. In any taxable year, a taxpayer may claim no more than one-fourth of the
13 credit under this subsection which is attributable to an investment made
14 before January 1, 2005.

15 c. Any amount of credit under this subsection not allowed because of the
16 limitations in this section may be carried forward for up to five taxable years
17 after the taxable year in which the investment was made.

18 **SECTION 4. AMENDMENT.** Section 57-38.6-04 of the North Dakota Century Code is
19 amended and reenacted as follows:

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

24 **SECTION 5. EFFECTIVE DATE.** Section 1 of this Act is effective for any business
25 certified by the director after December 31, 2004. Sections 2, 3, and 4 of this Act are effective
26 for taxable years beginning after December 31, 2004.