

**Fifty-ninth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 4, 2005**

SENATE BILL NO. 2281
(Senators Klein, Grindberg, Taylor)
(Representatives Belter, Mueller, Pollert)

AN ACT to create and enact a new subsection to section 57-38.6-03 of the North Dakota Century Code, relating to agricultural business investment income tax credits; to amend and reenact sections 57-38.6-01, 57-38.6-02, 57-38.6-03, and 57-38.6-04 of the North Dakota Century Code, relating to agricultural business investment income tax credits; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-38.6-01 of the North Dakota Century Code is amended and reenacted as follows:

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

1. "Agricultural commodity processing facility" means a facility that through processing involving the employment of knowledge and labor adds value to an agricultural commodity capable of being raised in this state.
2. "Director" means the director of the department of commerce division of economic development and finance.
3. "Qualified business" means a cooperative, corporation, partnership, or limited liability company that:
 - a. Is incorporated or organized in this state after December 31, 2000, for the primary purpose of processing and marketing agricultural commodities capable of being raised in this state;
 - b. ~~Is~~ Has been certified by the securities commissioner to be in compliance with the requirements for filings with the securities commissioner under the securities laws of this state;
 - c. Has an agricultural commodity processing facility, or intends to locate one, in this state; and
 - d. ~~Has a majority of its ownership interests owned by producers of unprocessed agricultural commodities~~ Is among the first ten businesses that meets the requirements of this subsection, but not a business that was previously certified as a qualified business under chapter 57-38.5.
4. "Taxpayer" means an individual, estate, ~~or~~ trust, corporation, partnership, or limited liability company.

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

57-38.6-02. Certification - Investment reporting by qualified businesses. The director shall certify whether a business that has requested to become a qualified business meets the requirements of subsection 3 of section 57-38.6-01. The director shall establish the necessary forms and procedures for certifying qualified businesses. The director is not required to recertify a business as a qualified

business under this chapter if the business was previously certified by the director as a qualified business under chapter 57-38.5.

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

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

1. ~~The aggregate maximum annual investment for which credit a taxpayer may obtain a tax credit under this section is not more than twenty five thousand dollars and no taxpayer may obtain more than two hundred fifty thousand dollars in credits under this section over any combination of taxable years.~~ This subsection may not be interpreted to limit additional investment by a taxpayer for which that taxpayer is not applying for a credit.
2. In any taxable year, a taxpayer may claim no more than fifty percent of the credit under this section which is attributable to qualified investments in a single taxable year. The amount of the credit allowed under this section for any taxable year may not exceed fifty percent of the taxpayer's tax liability as otherwise determined under chapter 57-38.
3. Any amount of credit under this section not allowed because of the limitations in this section may be carried forward for up to ~~fifteen~~ five taxable years after the taxable year in which the investment was made.
4. A partnership, subchapter S corporation, limited liability company that for tax purposes is treated like a partnership, or any other passthrough entity that invests in a qualified business must be considered to be the taxpayer for purposes of the investment limitations in this section and, except for the tax liability limitation under subsection 2, the amount of the credit allowed with respect to ~~a partnership's~~ the passthrough entity's investment in a qualified business must be determined at the ~~partnership~~ passthrough entity level. The amount of the total credit determined at the ~~partnership~~ passthrough entity level must be allowed to the ~~partners, limited to individuals, estates, and trusts~~ passthrough entity's owners, in proportion to their respective ownership interests in the ~~partnership~~ passthrough entity.
5. The investment must be at risk in the business. A qualified investment must be in the form of a purchase of ownership interests or the right to receive payment of dividends from the business. An investment for which a credit is received under this section must remain in the business for at least three years. An investment placed in escrow does not qualify for the credit.
6. The entire amount of an investment for which a credit is claimed under this section must be expended by the qualified business for plant, equipment, research and development, marketing and sales activity, or working capital for the qualified business.
7. The tax commissioner may disallow any credit otherwise allowed under this section if any representation by a business in the application for certification as a qualified business proves to be false or if the taxpayer or qualified business fails to satisfy any conditions under this section or any conditions consistent with this section otherwise determined by the tax commissioner. The amount of any credit disallowed by the tax commissioner that reduced the taxpayer's income tax liability for any or all applicable tax years, plus penalty and interest provided under section 57-38-45, must be paid by the taxpayer.

SECTION 4. A new subsection to section 57-38.6-03 of the North Dakota Century Code is created and enacted as follows:

A taxpayer whose investment in an agricultural commodity processing facility was made before January 1, 2005, and did not qualify for the tax credit because of the two million five hundred thousand dollar credit limitation in section 57-38.5-02, is entitled to a credit against state income tax liability under section 57-38-29 or 57-38-30.3 in the amount of thirty percent of the amount invested by the taxpayer in a qualified business, subject to the following:

- a. The aggregate investment for which a taxpayer may obtain a credit under this subsection is not less than five thousand dollars and not more than two hundred fifty thousand dollars.
- b. In any taxable year, a taxpayer may claim no more than one-fourth of the credit under this subsection which is attributable to an investment made before January 1, 2005.
- c. Any amount of credit under this subsection not allowed because of the limitations in this section may be carried forward for up to four taxable years after the taxable year in which the investment was made.

SECTION 5. AMENDMENT. Section 57-38.6-04 of the North Dakota Century Code is amended and reenacted as follows:

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

SECTION 6. EFFECTIVE DATE. Section 1 of this Act is effective for any business certified by the director after December 31, 2004. Sections 2, 3, and 5 of this Act are effective for taxable years beginning after December 31, 2004. Section 4 of this Act is effective for tax year 2004 and is thereafter ineffective, except any unused credit may be carried forward as provided in section 4 of this Act.

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Fifty-ninth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2281.

Senate Vote: Yeas 42 Nays 3 Absent 2

House Vote: Yeas 92 Nays 1 Absent 1

Secretary of the Senate

Received by the Governor at _____ M. on _____, 2005.

Approved at _____ M. on _____, 2005.

Governor

Filed in this office this _____ day of _____, 2005,
at _____ o'clock _____ M.

Secretary of State