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FIRST ENGROSSMENT

Sixty-fourth
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2340

Introduced by

Senators Campbell, Robinson, Sorvaag

Representatives Keiser, Mock, Steiner

1 A BILL for an Act to create and enact a new subdivision to subsection 3 of section 1 of Senate

2 Bill No. 2057, as approved by the sixty-fourth legislative assembly, relating to regular evaluation

3 of economic development tax incentives created by the sixty-fourth legislative assembly; to

4 amend and reenact section 57-38-01.33 of the North Dakota Century Code, relating to an

5 income tax credit for purchases of manufacturing machinery and equipment for automating

6 manufacturing processes; and to provide an effective date.

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

8   **SECTION 1.** A new subdivision to subsection 3 of section 1 of Senate Bill No. 2057, as

9 approved by the sixty-fourth legislative assembly, is created and enacted as follows:

10   Any economic development tax incentive created by the sixty-fourth legislative

11   assembly.

12   **SECTION 2. AMENDMENT.** Section 57-38-01.33 of the North Dakota Century Code is

13 amended and reenacted as follows:

14   **57-38-01.33. (Effective for the first three taxable years beginning after December 31,**

15 **2012) Income tax credit for purchases of manufacturing machinery and equipment for**

16 **the purpose of automating manufacturing processes.**

17   1.   A taxpayer that is a primary sector business is allowed a nonrefundable credit against

18   the tax imposed under section 57-38-30 or 57-38-30.3 for purchases of manufacturing

19   machinery and equipment for the purpose of automating manufacturing processes in

20   this state. The amount of the credit under this section is twenty percent of the ~~costs~~

21   ~~incurred in the taxable year to purchase~~cost of the manufacturing machinery and

22   equipment ~~for the purpose of automating manufacturing processes~~purchased in the

23   taxable year. Qualified expenditures under this section may not be used in the

1   calculation of any other income tax deduction or credit allowed ~~by law~~under this

2   chapter.

3 2. For purposes of this section:

4   a. "Manufacturing machinery and equipment for the purpose of automating

5   manufacturing processes" means new or used automation and robotic

6   equipment.

7   b. "Primary sector business" means a business certified by the department of

8   commerce which, through the employment of knowledge or labor, adds value to a

9   product, process, or service that results in the creation of new wealth.

10   c. "Purchase" includes manufacturing machinery and equipment acquired under a

11   capital lease only for the taxable year in which the lease is executed. A capital

12   lease is a lease which meets generally accepted accounting principles. The

13   qualifying costs of the equipment acquired under a capital lease is the fair market

14   value of the equipment at the inception of the lease.

15 3. The taxpayer shall claim the total credit amount for the taxable year in which the

16   manufacturing machinery and equipment are purchased. The credit under this section

17   may not exceed the taxpayer's liability as determined under this chapter for any

18   taxable year.

19 4. If the amount of the credit determined under this section exceeds the liability for tax

20   under this chapter, the excess may be carried forward to each of the next five

21   succeeding taxable years.

22 5. The aggregate amount of credits allowed under this section may not exceed two

23   million dollars in any calendar year. ~~Credits subject to this limitation must be~~

24   ~~determined based upon the date of the qualified purchase~~If the aggregate amount of

25   credits claimed under this section exceeds two million dollars in a calendar year, the

26   tax commissioner shall prorate the allowable amount of credits among the claimants.

27 6. If a taxpayer entitled to the credit provided by this section is a member of a group of

28   corporations filing a North Dakota consolidated tax return using the combined

29   reporting method, the credit may be claimed against the aggregate North Dakota tax

30   liability of all the corporations included in the North Dakota consolidated return.

1   7.   A passthrough entity entitled to the credit under this section must be considered to be

2   the taxpayer for purposes of calculating the credit. The amount of the allowable credit

3   must be determined at the passthrough entity level. The total credit determined at the

4   entity level must be passed through to the partners, shareholders, or members in

5   proportion to their respective interests in the passthrough entity. An individual taxpayer

6   may take the credit passed through under this subsection against the individual's state

7   income tax liability under section 57-38-30.3.

8   8.   The department of commerce shall provide the tax commissioner the name, address,

9   and federal identification number or social security number of the taxpayer approved

10   as qualifying for the credit under this section, and a list of those items that were

11   approved as a qualified expenditure by the department. The taxpayer claiming the

12   credit shall file with the taxpayer's return, on forms prescribed by the tax

13   commissioner, the following information:

14   a.   The name, address, and federal identification number or social security number

15   of the taxpayer who made the purchase; and

16   b.   An itemization of:

17   (1)   Each item of machinery or equipment purchased for automation;

18   (2)   The amount paid for each item of machinery or equipment if the amount

19   paid for the machinery or equipment is being used as a basis for calculating

20   the credit; and

21   (3)   The date on which payment for the purchase was made.

22   9.   Notwithstanding the time limitations contained in section 57-38-38, this section does

23   not prohibit the tax commissioner from conducting an examination of the credit

24   claimed and assessing additional tax due under section 57-38-38.

25   **SECTION 3. EFFECTIVE DATE.** This Act is effective for purchases made after

26   December 31, 2014.