

Fifty-fifth  
Legislative Assembly  
of North Dakota

## HOUSE BILL NO. 1174

Introduced by

Representatives Brandenburg, Gulleson, Kroeplin, Nicholas

Senators Kelsh, Thane

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 North Dakota for the primary purpose of processing and  
20 marketing agricultural commodities capable of being raised in this state;
  - 21 b. Is in compliance with the requirements for filings with the securities  
22 commissioner under the securities laws of this state;
  - 23 c. Has an agricultural commodity processing facility in this state; and

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

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

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

**57-38.6-03. Agricultural cooperative investment tax credit.** If a taxpayer makes a qualified investment in a qualified cooperative, the taxpayer is entitled to a credit against state income tax liability as determined under section 57-38-29 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 cooperatives during the taxable year, subject to the following:

1. The aggregate annual investment for which a taxpayer may obtain a tax credit under this section is not less than five thousand dollars and not more than fifty thousand dollars. 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 taxable years after the taxable year in which the investment was made.
4. A partnership that invests in a qualified cooperative must be considered to be the taxpayer for purposes of the investment limitations in this section and the amount of the credit allowed with respect to a partnership's investment in a qualified cooperative must be determined at the partnership level. The amount of the total credit determined at the partnership level must be allowed to the partners, limited to individuals, estates, and trusts, in proportion to their respective interests in the partnership.

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

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

7. The tax commissioner may disallow any credit otherwise allowed under this section if any representation by a cooperative in the application for certification as a qualified cooperative proves to be false or if the taxpayer or qualified cooperative 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.

**57-38.6-04. Taxable year for agricultural cooperative 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 cooperative was received by the qualified cooperative.

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

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

8 provided under section 57-38-56 for purposes of this chapter. 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, 1996, and for investments in qualified cooperatives made after December 31,

13 1996.