

Fifty-fifth  
Legislative Assembly  
of North Dakota

## ENGROSSED HOUSE BILL NO. 1174

Introduced by

Representatives Brandenburg, Gulleason, 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 processing business  
3 investment 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  
6 Code 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 business" means a business that:
  - 19 a. Is a corporation, cooperative, or limited liability company incorporated or  
20 organized in North Dakota for the primary purpose of processing and  
21 marketing agricultural commodities capable of being raised in this state;
  - 22 b. Is in compliance with the requirements for filings with the securities  
23 commissioner under the securities laws of this state; and
  - 24 c. Has an agricultural commodity processing facility in this state.

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

**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.

**57-38.6-03. Agricultural processing 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 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 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 business 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 business 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 business. A qualified investment must be in the form of a purchase of stock, membership interests, or the right to receive

1 payment of dividends from the business. An investment for which a credit is  
2 received under this section must remain in the business for at least three years.

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

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

15 **57-38.6-04. Taxable year for agricultural processing business investment tax**

16 **credit.** The tax credit under section 57-38.6-03 accrues to the taxpayer for the taxable year in  
17 which full consideration for the investment in the qualified business was received by the  
18 qualified business.

19 **57-38.6-05. Agricultural business investment tax credit - Procedure - Rules.** To

20 receive the tax credit provided by section 57-38.6-03, a taxpayer must claim the credit on the  
21 taxpayer's annual state income tax return in the manner prescribed by the tax commissioner  
22 and file with the return a copy of the form issued by the qualified business as to the taxpayer's  
23 investment in the qualified business under section 57-38.6-06.

24 **57-38.6-06. Investment reporting forms.** Within thirty days after the date on which an

25 investment in a qualified business is purchased, the qualified business shall file with the tax  
26 commissioner and the director and provide to the investor completed forms prescribed by the  
27 tax commissioner which show as to each investment in the qualified business the following:

- 28 1. The name, address, and social security number of the taxpayer who made the  
29 investment.  
30 2. The dollar amount paid for the investment by the taxpayer.

1           3.    The date on which full consideration was received by the qualified business for the  
2                   investment.

3           **57-38.6-07. Rules and administration.** The tax commissioner is charged with  
4 administration of this chapter as it relates to an income tax credit and has the same powers as  
5 provided under section 57-38-56 for purposes of this chapter. The director is charged with  
6 administration of this chapter as it relates to certification of qualified businesses and the director  
7 may adopt rules for that purpose.

8           **SECTION 3. EFFECTIVE DATE.** This Act is effective for taxable years beginning after  
9 December 31, 1996, and for investments in qualified agricultural processing businesses made  
10 after December 31, 1996.