

Sixtieth  
Legislative Assembly  
of North Dakota

**SENATE BILL NO. 2084**

Introduced by

Finance and Taxation Committee

(At the request of the Tax Commissioner)

1 A BILL for an Act to amend and reenact sections 57-38.5-02 and 57-38.5-03 of the North  
2 Dakota Century Code, relating to certification of a qualified business and calculation of the seed  
3 capital investment tax credit; and to provide an effective date.

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

5 **SECTION 1. AMENDMENT.** Section 57-38.5-02 of the North Dakota Century Code is  
6 amended and reenacted as follows:

7 **57-38.5-02. Certification - Investment reporting by qualified businesses -**

8 **Maximum investments in qualified businesses.** ~~The director shall certify whether a business~~  
9 ~~that has requested to become a qualified business meets the requirements of subsection 5 of~~  
10 ~~section 57-38.5-01 and the certification must include the period of time the certification covers.~~  
11 ~~The director shall establish the necessary forms and procedures for certifying qualified~~  
12 ~~businesses. For investments made after December 31, 2004, the maximum aggregate amount~~  
13 ~~of qualified investments a qualified business may receive is limited to five hundred thousand~~  
14 ~~dollars under this chapter. The limitation on investments under this section may not be~~  
15 ~~interpreted to limit additional investment by a taxpayer for which that taxpayer is not applying for~~  
16 ~~a credit.~~

17 1. The director shall certify whether a business that has requested to become a  
18 qualified business meets the requirements of subsection 5 of section 57-38.5-01.

19 The director shall establish the necessary forms and procedures for certifying  
20 qualified businesses.

21 2. A qualified business may apply to the director for a recertification. Only one  
22 recertification is available to a qualified business. The application for recertification  
23 must be filed with the director within ninety days before the original certification

expiry date. The recertification issued by the director must comply with the provisions of subsection 3.

3. A certification letter must be issued by the director to the qualified business. The certification letter must include:

a. The certification effective date.

b. The certification expiry date. The expiry date may not be more than four years from the certification effective date.

4. The maximum aggregate amount of qualified investments a qualified business may receive for all tax years is limited to five hundred thousand dollars under this chapter. The tax credit allowed on qualified investments in a qualified business must be allowed to taxpayers in the chronological order of the taxpayer's qualified investments as determined from the forms filed under section 57-38.5-07. The limitation on investments under this subsection may not be interpreted to limit additional investment by a taxpayer for which that taxpayer is not applying for a credit.

**SECTION 2. AMENDMENT.** Section 57-38.5-03 of the North Dakota Century Code is amended and reenacted as follows:

**57-38.5-03. Seed capital 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 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 forty-five percent of the amount invested by the taxpayer in qualified businesses during the taxable year, subject to the following:~~

1. The amount of the credit to which a taxpayer is entitled is forty-five percent of the amount invested by the taxpayer in qualified businesses during the taxable year.

2. ~~The aggregate maximum annual investment for which credit a taxpayer may obtain a tax credit claim under this section is not more than two hundred fifty thousand~~ one hundred twelve thousand five hundred 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 one-third of the credit under this section which is attributable to investments in a single taxable year.~~

- 1           3. Any amount of credit under ~~this section~~ subsection 1 not allowed because of the
- 2           ~~limitations~~ limitation in ~~this section~~ subsection 2 may be carried forward for up to
- 3           four taxable years after the taxable year in which the investment was made.
- 4           4. A passthrough entity that invests in a qualified business must be considered to be
- 5           the taxpayer for purposes of the investment limitations in this section and the
- 6           amount of the credit allowed with respect to a passthrough entity's investment in a
- 7           qualified business must be determined at the passthrough entity level. The amount
- 8           of the total credit determined at the passthrough entity level must be allowed to the
- 9           members in proportion to their respective interests in the passthrough entity.
- 10          5. An investment made in a qualified business from the assets of a retirement plan is
- 11          deemed to be the retirement plan participant's investment for the purpose of this
- 12          chapter if a separate account is maintained for the plan participant and the
- 13          participant directly controls where the account assets are invested.
- 14          6. The investment must be made on or after the certification effective date and must
- 15          be at risk in the business to be eligible for the tax credit under this section. An
- 16          investment for which a credit is received under this section must remain in the
- 17          business for at least three years. Investments placed in escrow do not qualify for
- 18          the credit.
- 19          ~~6.~~ 7. The entire amount of an investment for which a credit is claimed under this section
- 20          must be expended by the qualified business for plant, equipment, research and
- 21          development, marketing and sales activity, or working capital for the qualified
- 22          business.
- 23          ~~7.~~ 8. A taxpayer who owns a controlling interest in the qualified business or ~~whose~~
- 24          ~~full time professional activity is the operation of the business~~ who receives more
- 25          than fifty percent of the taxpayer's gross annual income from the qualified business
- 26          is not entitled to a credit under this section. A member of the immediate family of a
- 27          taxpayer disqualified by this subsection is not entitled to the credit under this
- 28          section. For purposes of this subsection, "immediate family" means the taxpayer's
- 29          spouse, parent, sibling, or child or the spouse of any such person.
- 30          ~~8.~~ 9. The tax commissioner may disallow any credit otherwise allowed under this section
- 31          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 commissioner has four years after the due date of the return or after the return was filed, whichever period expires later, to audit the credit and assess additional tax that may be found due to failure to comply with the provisions of this chapter. 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 as provided under section 57-38-45, must be paid by the taxpayer.

**SECTION 3. EFFECTIVE DATE.** This Act is effective for taxable years beginning after December 31, 2006, and for qualified businesses certified or recertified after December 31, 2006.